

LCGVMAX1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x
4 UNITED STATES OF AMERICA,

5 v.

20 CR 330 (AJN)

6 GHISLAINE MAXWELL,

7 Defendant.

Jury Trial

8 -----x

9 New York, N.Y.
10 December 16, 2021
11 8:55 a.m.

12 Before:

13 HON. ALISON J. NATHAN,

14 District Judge

15 APPEARANCES

16 DAMIAN WILLIAMS

17 United States Attorney for the
18 Southern District of New York

19 BY: MAURENE COMEY

20 ALISON MOE

21 LARA POMERANTZ

22 ANDREW ROHRBACH

23 Assistant United States Attorneys

24 HADDON MORGAN AND FOREMAN

25 Attorneys for Defendant

BY: JEFFREY S. PAGLIUCA

LAURA A. MENNINGER

-and-

BOBBI C. STERNHEIM

-and-

COHEN & GRESSER

BY: CHRISTIAN R. EVERDELL

Also Present: Amanda Young, FBI

Paul Byrne, NYPD

Sunny Drescher,

Paralegal, U.S. Attorney's Office

Ann Lundberg,

Paralegal, Haddon Morgan and Foreman

LCGVMAX1

1 (Trial resumed; jury not present)

2 THE COURT: All right. We have a number of issues to
3 take up. I've gotten letter briefing on several issues over
4 the past few days, including some new issues that came in last
5 night. I did address the issue of defense witness anonymity by
6 order last night, which will be docketed this morning when
7 docketing puts it up, denying the defense request for anonymity
8 for the reasons indicated.

9 As to the remaining issues, so there's the prior
10 inconsistent statements issue. I received the letter with the
11 government objections close to 11 p.m. last night. I haven't
12 had the ability to yet go through all of them, and I haven't
13 heard any responses from the defense.

14 What's the timing of anticipated witnesses here?

15 MR. EVERDELL: Your Honor, for the witness order?

16 THE COURT: Well, when might we get to a witness who
17 implicates the prior inconsistent statements? And I gather
18 there's been some effort to work through stipulation and
19 narrowing.

20 MR. EVERDELL: Yes, your Honor.

21 There have been some efforts, and I think there's
22 going to be continued efforts there. I don't think we have a
23 witness until after lunch that is going to implicate the prior
24 inconsistent statements.

25 THE COURT: Okay. That may be what we're doing during

LCGVMAX1

1 lunch then.

2 MR. EVERDELL: Yes, your Honor.

3 THE COURT: I think this is an area ripe for narrowing
4 and stipulation when feasible.

5 Okay. Next is the attorney witness issue. I am
6 prepared to give guidance on that.

7 Okay. So I have the defense's letter to call
8 attorneys Jack Scarola, Brad Edwards, and Robert Glassman to
9 testify during the defense case-in-chief. And I've looked
10 quite carefully at these arguments and proffers. Obviously
11 I've had the one related to Mr. Glassman the longest.

12 The defense argues that the testimony of the attorneys
13 is relevant to show how and why the alleged victims cooperated
14 with the prosecution in this case, which it argues is relevant
15 to motive to testify and bias. I think the government concedes
16 that, with the exception of Mr. Glassman's requested testimony
17 as to whether he told Jane that cooperating would "help her
18 case," other than that, I think the government agrees that the
19 proffered testimony is not -- at least as framed --
20 attorney-client privilege.

21 I still have to exercise caution in considering the
22 ability of defense to call these witnesses, since they are
23 attorneys for witnesses who testified, and the boundary to
24 privileged communications can be easily crossed. I do think as
25 a general matter, to the extent the defense has established

LCGVMAX1

1 that any of these witnesses will testify to relevant
2 nonprivileged information that is not outweighed by prejudice,
3 it's possible to get such testimony.

4 After careful consideration, with one exception, the
5 information the defense seeks to elicit from the three
6 attorneys, I conclude, is either not relevant under Rule 401,
7 is duplicative of information elicited on cross-examination
8 and, therefore, outweighed by prejudice, or is only potentially
9 marginally relevant to the limited inference of impeachment so
10 as to be outweighed by 403 prejudice.

11 The one question I intend to permit is the one I
12 suggested the parties stipulate to testimony from Mr. Glassman.
13 I will permit Mr. Glassman to be asked the following: Did you
14 tell the government that you told Jane that cooperating with
15 the government and testifying in this case would help her civil
16 case against Epstein's estate and Ms. Maxwell and/or her claim
17 to the victims' compensation fund?

18 The question does not elicit privileged information
19 directly because it seeks only to know what Mr. Glassman told
20 the government. Unlike the other proffers, this testimony is
21 relevant because Mr. Glassman's testimony, if the answer is
22 yes, could contradict Jane's testimony and allow an inference
23 to the jury that at least at one point she may have been under
24 the impression that testifying would help her civil case
25 against Ms. Maxwell and her claim to the fund. With this

LCGVMAX1

1 inference, the jury could find that Mr. Glassman's testimony
2 tends to impeach Jane either as to motive to testify or
3 impeachment by contradiction or both. So that is my guidance
4 on the issue of the attorney -- the witness attorney testimony.

5 Any questions?

6 MR. ROHRBACH: None from the government, your Honor.

7 MR. PAGLIUCA: I just want to be clear, your Honor.

8 You're precluding testimony from Mr. Scarola and
9 Mr. Edwards.

10 THE COURT: Yes.

11 MR. PAGLIUCA: The only reason I'm asking that
12 question is we can release them and not have them appear.

13 THE COURT: Yes, on the 401/403 grounds.

14 MR. PAGLIUCA: Understood.

15 And that may speed things up a little bit here, since
16 we're releasing a couple of witnesses.

17 THE COURT: Okay. Thank you.

18 All right. Making progress.

19 There's a government objection to preclude, pursuant
20 to Rule 16, an exhibit that I gather purports to be a sale
21 agreement for the defendant's home in -- house in London at 44
22 Kinnerton Street dated 1996. Does that have a trial mark for
23 identification, that exhibit?

24 MR. EVERDELL: It does now, I believe, your Honor.

25 THE COURT: Okay. Just in time.

LCGVMAX1

1 MR. EVERDELL: Yes. This is going to be MG -- one of
2 the MG exhibits, the agreement for sale. We're just checking
3 which one it is, your Honor. It's marked as MG-2 now, your
4 Honor. We're going to have to hand up, I think, to the Court
5 some of these things. I'm sorry, we have them in Trial
6 Director now, so we'll be able to --

7 THE COURT: You have them what?

8 MR. EVERDELL: We have these marked exhibits in Trial
9 Director; we'll be able to put them on the screen.

10 THE COURT: I don't have a -- do you have a paper
11 copy?

12 MR. EVERDELL: Of that particular exhibit?

13 THE COURT: Yes.

14 MR. EVERDELL: We can bring it for the Court.

15 THE COURT: Okay. Do you have a copy in front of you,
16 Mr. Everdell?

17 MR. EVERDELL: I don't, because that's a witness
18 that's coming later. But let me see if I can find one.

19 THE COURT: Okay. Well, maybe we can see what else we
20 can get to.

21 MR. ROHRBACH: Your Honor, I have a paper copy.

22 THE COURT: Okay.

23 MR. EVERDELL: Put it on the screen.

24 THE COURT: That's fine.

25 MR. EVERDELL: Put MG-2 on the screen, please, for the

LCGVMAX1

1 Court, for the judge, and the deputy.

2 THE COURT: I'm sorry, give me again the trial mark.

3 MR. EVERDELL: MG-2, your Honor.

4 THE COURT: Okay. There it is. Okay.

5 Is this you, Mr. Everdell?

6 MR. EVERDELL: No, this is going to be Ms. Sternheim.

7 THE COURT: Okay.

8 MS. STERNHEIM: Judge, I do have a copy if you'd like
9 to see it.

10 THE COURT: Okay. Great. Thank you.

11 All right. And we're marking this MG-2.

12 I'm sorry, I meant the cover letter.

13 MR. EVERDELL: The cover letter that's dated 2010?

14 THE COURT: Yes.

15 MR. EVERDELL: Okay. We removed that from the marked
16 exhibit; it's just the agreement of sale that's underneath
17 that.

18 THE COURT: Oh, you're just seeking to move the --

19 MR. EVERDELL: Your Honor, there are a number of
20 documents that we're going to try to introduce through -- it's
21 actually slightly more complicated now. So Mr. Grumbridge, who
22 is going to be --

23 THE COURT: What has been simple?

24 MR. EVERDELL: Nothing's been simple.

25 Mr. Grumbridge is unable to come because of

LCGVMAX1

1 professional reasons. He would be available Tuesday. But
2 we're going to try to do this a different way.

3 We have a notary named Keith Rooney who we plan to
4 call today who has gone to the land registry and has obtained
5 certified copies of the land registry entries for this property
6 showing when the title transferred to Ms. Maxwell. And I have
7 copies of those documents, if you'd like to see those.

8 THE COURT: Not yet, but maybe.

9 MR. EVERDELL: Okay. He's also gone to the consulate,
10 I believe, and got it apostilled to make it a foreign public
11 document, certified as a foreign public record that could be
12 admitted, self-authenticating by itself. But we'd like to call
13 him to explain the process that he went through to get these
14 documents and admit them that way.

15 He is also going to -- we were going to seek to admit
16 Mr. Grumbridge's records through them as well, because he's
17 gone to Mr. Grumbridge's office in London, checked his files,
18 seen the copies of the agreement for sale and the other
19 documents we were going to admit through Mr. Grumbridge in his
20 files, has certified that they exist in his files, and can
21 authenticate those documents and introduce those as well.

22 THE COURT: All of this is in an effort to prove that
23 Ms. Maxwell did not live at this address before 1996?

24 MR. EVERDELL: That's correct.

25 THE COURT: So let's go back to the letter, if we

LCGVMAX1

1 could, the cover letter. Do we know why it's dated 2010?

2 MR. EVERDELL: Your Honor, I think that's a separate
3 record. Because I think that record reflects that there was an
4 opportunity to purchase the leasehold outright in 2010. It's a
5 little bit of a complicated title. It's actually a leasehold.
6 She does own the lease; it's effectively owning it, but this
7 land, I think, has been in the possession of the Duke of
8 Westminster since, you know, 1500. It's a very complicated
9 chain of title in the UK.

10 But the way it works is you pass the leasehold from
11 one person to another. And that is effectively ownership under
12 the land registry records. And that leasehold passed in -- the
13 contracts were exchanged in '96, and the deal closed in '97, in
14 January '97; and it was registered in a land registry as a
15 transfer of that title in March of '97.

16 THE COURT: And again, my question is not that it's to
17 prove when Ms. Maxwell purchased the home, but the defense's
18 proffer from counsel is that it is to prove that she did not
19 live there before 1996?

20 MR. EVERDELL: That's right. We have a witness, Kate,
21 who says -- she didn't live there before 1997, because that's
22 when she actually took possession of the property, right.

23 We have a witness, Kate, who has testified to events
24 that allegedly took place in the Kinnerton Street property in
25 '94 and '95. And these records show that she didn't own that

LCGVMAX1

1 place; that she wasn't living in that place --

2 THE COURT: Well, they show she didn't own it, I
3 suppose.

4 MR. EVERDELL: Correct.

5 THE COURT: It sounds like there are different stages
6 in the purchase process.

7 MR. EVERDELL: Well, yes.

8 But the records also reflect in the land registry that
9 the ownership existed with this couple whose last time is
10 O'Neill. They owned it under the land registry records as of
11 1992. That title passes then to Ms. Maxwell in 1997. These
12 are both land registry entries which I have here, if the Court
13 would like to see them.

14 And what Mr. Grumbridge's records -- the agreement for
15 sale, for example, just shows the process of that contracting,
16 right. So in December of '96, the parties exchange contracts;
17 Mr. and Mrs. O'Neill and Ms. Maxwell entered into contract for
18 sale for this property. And that deal closed as of January
19 1997. That's reflected in the agreement for sale. And then
20 the notice is given to the land registry to make it an official
21 land record by March of '97. So there's a record on file in
22 the land registry recording that the title has passed from the
23 O'Neills to Ms. Maxwell as of March of '97.

24 So there's a couple of documents that we think are
25 relevant that we think Mr. Rooney could enter into evidence.

LCGVMAX1

1 The first is the actual land registry records, which
2 are here, which show -- and I can pass them up if the Court
3 would like, which show the first ownership, which belongs to
4 the O'Neills as of '92; and then title passing to Ms. Maxwell
5 as of '97. That's here. There's also a land registry record
6 which shows the actual transfer of title which describes all of
7 this as well.

8 And then there are the records that are found in
9 Mr. Grumbridge's files, because he was the attorney who
10 represented Ms. Maxwell in this transaction, which include that
11 agreement for sale, because that's a private document, but it
12 exists in his files, it's still there. And Mr. Rooney has seen
13 it in his files in London. And he's prepared to testify to
14 that because he's here today. And a few other documents that
15 were in his files that relate to this sale of the property and
16 the transfer of title at that time.

17 THE COURT: Okay. Mr. Rohrbach.

18 MR. ROHRBACH: I think that the point Mr. Everdell
19 just made about how this is confusing and complicated
20 reinforces two of the government's arguments.

21 First of all, putting this confusing set of land
22 transfers and leaseholds that speaks to when the defendant took
23 ownership of the property would confuse the jury into having to
24 understand British real estate law and actually says nothing
25 about when she, in fact, occupied the property for the reasons

LCGVMAX1

1 the government explained in its letter, including the
2 deposition --

3 THE COURT: So the government indicates that Ms.
4 Maxwell's 2019 deposition indicates that she lived in the home
5 beginning in '92 or '93?

6 MR. ROHRBACH: Yes, your Honor.

7 THE COURT: Would the government seek to introduce
8 that testimony if I let in the legal documents?

9 MR. ROHRBACH: Yes, we would, your Honor.

10 THE COURT: Okay. So we're going to have a trial
11 on -- we're going to have a little mini trial on whether -- on
12 whether Ms. Maxwell lived -- not owned, but lived in that house
13 prior to 1997?

14 MR. EVERDELL: Your Honor, this is, I think, hardly a
15 mini trial. This is extremely probative --

16 THE COURT: What about the testimony, deposition
17 testimony, in which she said she lived there beginning in '92
18 or '93; it comes in, doesn't it?

19 MR. EVERDELL: We can argue that, I suppose, your
20 Honor. But even if it does come in, they can argue that that
21 shows that she's --

22 THE COURT: Well, that goes directly to when she lived
23 there. Your evidence goes to when she owned it. Right?

24 MR. EVERDELL: That's right. But --

25 THE COURT: So when she -- I see the relevance for

LCGVMAX1

1 impeachment as to when she lived there. What is the relevance
2 to when she owned it?

3 MR. EVERDELL: Your Honor, the records show that the
4 O'Neills owned that property until 1997, some family of the
5 O'Neills, not Ms. Maxwell.

6 THE COURT: They don't rent places in London?

7 MR. EVERDELL: That's something that the government,
8 I'm sure, could argue to the jury. But this is extremely
9 relevant. We're equally able to argue to the jury that this
10 shows that she owned it, and what Kate is testifying to
11 couldn't have happened because --

12 THE COURT: Well, again, it shows ownership. I get
13 that. The relevant question is residence. The government has
14 testimony from Ms. Maxwell that she lived there beginning in
15 1992. What evidence do you have as to whether or not she lived
16 there prior to ownership?

17 MR. EVERDELL: Your Honor, if I may have a moment.

18 THE COURT: You may.

19 (Counsel conferred with defendant)

20 MR. EVERDELL: Your Honor, I think the solution to
21 this problem -- and this would not be a mini trial -- is for us
22 to be able to admit the records showing the ownership records.
23 And if the government wants to admit the testimony to be able
24 to argue the opposite point, then okay. But that's hardly a
25 mini trial. And then each side gets to argue their point.

LCGVMAX1

1 THE COURT: I was sort of leaning that way when I
2 thought the attorney was going to come testify who could be
3 crossed on this precise question. But you want it to just come
4 in -- you want a fact not in issue, which is the ownership
5 question, you want an inference from ownership -- ownership is
6 confusing; but the inference from the timing of ownership as to
7 when she lived there, which is contradicted by deposition
8 testimony that would come in from Ms. Maxwell.

9 MR. EVERDELL: Your Honor, I think we have records
10 which we'd have to find and anticipate this being the issue.
11 But Ms. Maxwell had another place in London at a street called
12 Stanhope Mews, I think it was 69 Stanhope Mews. And we may be
13 able to find the title records that she sold it, because she
14 had that prior to the Kinnerton Street residence. And I think
15 if you have -- we'd have to look for those. I think we
16 probably can find them. But they would show that she had
17 another place until she bought this new place.

18 So I think that is a fair inference to say that if
19 somebody owned another place and didn't buy another place until
20 later, that they are not living at that new place if they owned
21 the other place. That's just common sense.

22 THE COURT: And why can't the attorney who you had
23 proffered as the witness for this testify?

24 MR. EVERDELL: Your Honor, if we need the attorney, we
25 can try to get him here, but we just couldn't get him here

LCGVMAX1

1 Thursday or Friday. So if you give me a moment on that, I can
2 check on the status of that.

3 THE COURT: Okay.

4 (Counsel conferred)

5 MR. EVERDELL: Your Honor, I'm told he has a court
6 appearance on Monday, and he's only going to be able to get on
7 a plane Monday night and would only be available to testify
8 Tuesday. We can consider a stipulation to his testimony too,
9 but I think these are all relevant and we should be able to
10 admit these to the jury to argue the inference.

11 THE COURT: I think the point of cross is whether he
12 has knowledge of whether -- of who lived at the residence
13 prior.

14 Mr. Rohrbach, the complication of ownership aside,
15 what is the government's view as to the relevance of facts
16 regarding who lived in the home prior to 1997?

17 MR. ROHRBACH: So who lived in the home might have
18 marginal impeachment value, but the government's view is that
19 it's only marginal. The proffer we have from the defense now
20 is that, at most, the defendant lived in a home nearby before
21 she moved to the 44 Kinnerton Street home. So to the extent
22 that that's true -- and again, it's contradicted by the
23 defendant's under-oath deposition testimony -- it would have
24 only marginal impeachment value. It would mean that, if true,
25 it would mean that Kate identified a nearby, but incorrect,

LCGVMAX1

1 address for the first time she went to the defendant's house,
2 at most. That's minimal impeachment value.

3 THE COURT: I think what makes sense here to talk
4 about is a stipulation as to the timing of ownership of the
5 Kinnerton -- 44 Kinnerton, the timing of ownership. And then
6 that can come in with the government's deposition -- with the
7 deposition of Ms. Maxwell saying she lived there beginning in
8 '92 or '93. Then both sides can argue to the jury what they
9 want.

10 MR. ROHRBACH: Yes, your Honor.

11 The government would -- I'd like to confer with the
12 team, but I think the government would probably agree to a
13 stipulation that included both the ownership fact and the
14 deposition testimony, so they'll both come in.

15 MR. EVERDELL: We'll have to confer on this, Judge,
16 but I understand what the Court's position is.

17 THE COURT: Okay. It sounds like that gives you what
18 you want, which was the fact of ownership timing from which you
19 can argue to the jury that because she didn't own it until a
20 certain date, she couldn't have lived there before that date.
21 And you can then argue, therefore, Kate wasn't accurate or
22 testified falsely or however you want to phrase it, that she
23 was in that -- she believed Ms. Maxwell lived there prior to
24 '97.

25 MR. EVERDELL: Just to preview for the Court, I think

LCGVMAX1

1 we would also like to include, which is information that
2 Mr. Grumbridge would have about the Stanhope Mews ownership
3 prior to this, because he was the lawyer and solicitor involved
4 in that transaction as well, from my understanding. So I think
5 it's -- to make the same point. But if we're going to lose his
6 testimony, because I think it's relevant testimony, I would
7 like to get in all parts of his testimony that I think are
8 relevant to this issue of ownership.

9 MR. ROHRBACH: We're happy to confer with defense
10 counsel and try to work something out. I would just note that
11 defense counsel has not produced any records to the government
12 showing this prior ownership of Stanhope Mews.

13 THE COURT: All right.

14 MR. ROHRBACH: We'll confer with the defense and try
15 to work out a stipulation.

16 THE COURT: Great. Thank you.

17 Okay. All right. Moving on to the Dr. Loftus
18 testimony. So I got the letter dated December 15th in which
19 the government seeks to exclude two aspects of Dr. Loftus's
20 anticipated expert testimony on suggestive activities: Her
21 testimony on the use of leading questions by government
22 investigators, and her anticipated testimony on the therapist
23 technique of response pressure to provide more detail about a
24 patient's experience.

25 In an order dated November 21st, 2021, I ruled that

LCGVMAX1

1 Dr. Loftus's opinions on suggestive activities are generally
2 admissible. The government argues that the above two opinions,
3 however, lack a foundation in the record. I'm going to deny
4 the government's motion to preclude here, but with guidance.

5 First, as we've discussed and I've made clear, Dr.
6 Loftus is testifying, I understand, as a blind expert, meaning
7 that she'll provide relevant expert opinion, but not apply it
8 to the facts of the case. And just as Dr. Rocchio offered
9 testimony that included examples of grooming, variety of
10 grooming examples or factors that might make a child vulnerable
11 to sexual abuse, it seems comparable to me that Dr. Loftus can
12 offer examples of suggestive activity, including the two
13 examples the government seeks to exclude. So long as her
14 testimony does not state that those activities occurred in this
15 case or go into any specifics of the case, that would be beyond
16 the bounds of a blind expert.

17 Second, I think there is -- the defense has provided
18 an adequate foundation for expert opinion on suggestive
19 questioning by the government by cross-examining witnesses
20 about the questions they were asked. For example, the defense
21 on cross-examination of Jane asked about the government asking
22 her the same question three times in the same interview, trial
23 transcript at 515. And Jane testified that the government,
24 quote, communicated to her through her attorney that *The Lion*
25 *King* didn't come out until 1997, which the defense also

LCGVMAX1

1 believes to be an example of suggestion. This testimony
2 provides a sufficient basis for the jury to consider the
3 relevance of Dr. Loftus's opinions on suggestive questioning
4 techniques. So that's my basis for that ruling.

5 There was argument regarding Agent Young testimony
6 that -- I don't know the government's general views on Agent
7 Young's testimony and I don't need to reach a conclusion on
8 that for purposes of this ruling. So I don't have further
9 guidance on that now.

10 All right. Questions on that?

11 MR. ROHRBACH: Nothing from the government, your
12 Honor.

13 MS. STERNHEIM: Nothing at this time.

14 THE COURT: Okay. Thank you.

15 All right. Motion to preclude Alexander Hamilton
16 testimony.

17 MS. STERNHEIM: We'd like to get Broadway tickets for
18 everyone. That's the best we can do.

19 THE COURT: It really is -- yes. It was Hamilton in
20 Federal '78 that said, We just have judgment, not will nor
21 force, just judgment. So I guess this calls for judgment.

22 So I have the defense response with respect to this
23 witness that came in at 12:31 a.m. this morning. I haven't had
24 a chance to work through the issue yet.

25 What's the timing on this witness?

LCGVMAX1

1 MS. STERNHEIM: The timing on this witness is that the
2 witness has COVID. So the witness will not be here unless the
3 Court permits his testimony to be versus via WebEx. And I have
4 cited another case in this district where I, in fact, was sent
5 to London when a government witness was too ill to come to the
6 district. And certainly given what the courts have been
7 utilizing through COVID, there certainly is a legitimate basis
8 for that request.

9 He cannot travel. He is quarantined. Provided he is
10 not incapacitated -- and I understand he would be able to give
11 testimony from his home -- that would be the request, if the
12 government was not willing to work out a stipulation based upon
13 the declaration that had been disclosed orally and had been
14 provided in written form.

15 MR. ROHRBACH: Your Honor, assuming the Court lets in
16 the testimony at all, the government is not going to agree to a
17 stipulation. We think this witness needs to be subject to
18 cross-examination. It may be possible -- I know the Court has
19 done before a procedure by which a witness can testify by
20 WebEx, but the Court would have to make certain findings first.
21 As part of that, we think that the witness would have to
22 produce the positive COVID test to demonstrate to the Court --

23 THE COURT: I thought the letter said that you've got
24 that.

25 MS. STERNHEIM: I do, but I didn't think it was

LCGVMAX1

1 necessary to make it part of a public record.

2 THE COURT: All right.

3 Why don't you work out -- Mr. Rohrbach, you think a
4 finding other than Ms. Sternheim's -- you think a record beyond
5 Ms. Sternheim's proffer that she has a positive COVID test,
6 would the government -- you said the court has done this
7 before; you mean a colleague has done it. I haven't done it.

8 MR. ROHRBACH: My understanding is that before the
9 COVID era, the Court may have done -- taken -- permitted a
10 witness to testify remotely or at least considered the issue
11 before. Maybe not permitted actually, your Honor.

12 My understanding is in general that the courts follow
13 the factors in Rule 15 for depositions in order to make this
14 determination; and so the Court would have to find that witness
15 is unavailable, that it's in the interest of justice before
16 permitting it.

17 THE COURT: Okay. And the government wants -- well,
18 it seems to me if there's a positive COVID test --

19 MR. ROHRBACH: We would not resist that the witness is
20 unavailable if there's a positive COVID test, your Honor.

21 THE COURT: Okay.

22 MR. ROHRBACH: To be clear, I don't think the
23 government is resisting on any of those factors. Under Rule 15
24 we would -- and we could come back at a break and elaborate on
25 exactly what the stretches are. We just would ask the Court to

LCGVMAX1

1 make the full record of the reasons for permitting the witness
2 to testify through WebEx.

3 THE COURT: Okay.

4 You don't disagree with that, do you?

5 MS. STERNHEIM: No. But I would just note that in the
6 case that I've cited, *United States v. Al-Fawwaz*, there was
7 less of a showing in that case as to the unavailability of the
8 witness who was available to come to the site where he was
9 deposed by myself and government counsel.

10 Here, we do have a definitive positive test for COVID,
11 and I think that speaks for itself. He certainly would not
12 even be able to get on a plane, let alone enter the United
13 States.

14 THE COURT: I think the unavailability on the
15 defense's proffer is established. So why don't you work out
16 the -- if a further record is required and logistics. I don't
17 think I let a witness testify remotely. I let a juror
18 deliberate remotely.

19 MR. ROHRBACH: I think the Court is right. I think
20 the Court considered and applied the Rule 15 factors, but did
21 not allow the witness to testify remotely is my recollection,
22 your Honor.

23 THE COURT: I'll look at it. But I anticipate this
24 witness will be permitted to testify by WebEx. So you'll work
25 out what we need to do to effectuate that.

LCGVMAX1

1 MS. STERNHEIM: Thank you.

2 THE COURT: Okay. What other open issues do we have
3 that we can deal with now, counsel?

4 MR. EVERDELL: Your Honor, I think there are some
5 issues with this first witness that I just want to raise with
6 the Court first.

7 THE COURT: That I have briefing on?

8 MR. EVERDELL: These are things that we've tried to
9 talk with the government about. I don't think it's going to be
10 a major dispute.

11 THE COURT: Okay. I just wanted to make sure I hadn't
12 missed it.

13 MR. EVERDELL: You did not miss anything.

14 THE COURT: Okay. Go ahead.

15 MR. EVERDELL: The first witness is Ms. Espinosa.

16 THE COURT: Right.

17 MR. EVERDELL: So the first issue, which I think the
18 government and the defense agree on, is that there's a line of
19 cross that we ask the government if they plan to get into, and
20 they have agreed that they won't. And that's related to the
21 following, which is that Ms. Galindo was a defendant in a civil
22 lawsuit by one of the Epstein -- not one of the accusers in
23 this case, but a different person. And so I've asked the
24 government that they not get into that; they've agreed that
25 they won't cross Ms. Espinosa about that.

LCGVMAX1

1 THE COURT: Okay.

2 MR. EVERDELL: I don't think there's any dispute about
3 that.

4 THE COURT: Agreement on that?

5 MS. POMERANTZ: Yes, your Honor.

6 THE COURT: Thank you, Ms. Pomerantz.

7 MR. EVERDELL: And the second issue is we were just
8 given by Ms. Espinosa some photographs that we would like to
9 admit into evidence. She brought them with her today, so we
10 just obtained them. I've shown them to the government.

11 I can describe them for the Court.

12 It's a series of photographs from the soap opera of
13 Jane's -- that Jane was on, because Ms. Galindo -- sorry,
14 Ms. Espinosa was a fan of the soap opera. And after Jane went
15 and became a soap opera star, Jane sent her these photographs.
16 And one is of her and there's some of other cast members as
17 well. And she has the envelope as well. And we would like to
18 admit those photographs and the envelope as exhibits in her
19 testimony.

20 I've shown them to the government. They were deciding
21 whether or not they had an objection to this, but I was going
22 to flag that for the Court.

23 MS. POMERANTZ: Your Honor, the government remains of
24 the view it doesn't understand the relevance of these
25 particular proffered exhibits; and would also note that this

LCGVMAX1

1 isn't impeaching her -- wouldn't be impeaching her testimony in
2 any way. We just don't understand the relevance of these
3 exhibits.

4 MR. EVERDELL: Your Honor, it's evidence that she
5 maintained a relationship with the people in her abuser's --
6 alleged abuser's office. I mean, if she claims that she left
7 New York and she fled this life with Epstein and didn't want
8 anything more to do with it, this is evidence that she was
9 keeping contact with people in his orbit. Ms. Espinosa worked
10 in his office and was there with him in the office every day.

11 So it goes to show that there was a continuing
12 relationship. She voluntarily sent these photographs to her
13 showing that she maintained that relationship voluntarily,
14 which I think is the opposite of what you would do if what you
15 wanted to do was put all this behind you and not be a part of
16 this world anymore.

17 MS. POMERANTZ: Your Honor, my recollection of Jane's
18 testimony was that she herself acknowledged that she had
19 maintained a relationship with some of the individuals and
20 their orbit on direct examination and in the course of her
21 testimony. So, again, I don't understand the relevance of
22 these photographs.

23 THE COURT: So just to be clear, you're saying that
24 evidence came in already that she maintained a relationship;
25 correct?

LCGVMAX1

1 MS. POMERANTZ: Your Honor, yes. There's no dispute
2 about that. This wouldn't impeach her.

3 THE COURT: I understand it wouldn't impeach, but
4 first we start with the relevance question. That's already in.

5 MS. POMERANTZ: Yes, your Honor.

6 THE COURT: Okay.

7 MR. EVERDELL: Your Honor, we don't simply have to
8 take the witness's testimony. We are allowed to show that same
9 point through other evidence. And these photographs show that
10 the relationship continued. And we are entitled to argue not
11 just from the witness's testimony, but from these photographs,
12 that there was a continuing relationship and what that means in
13 the defense's estimation, how we view -- how we can argue to
14 the jury what that means in terms of her state of mind.

15 THE COURT: All right. That the point is already in
16 establishes relevance. I don't think it's 403 prejudice to
17 have duplicative evidence of the nature of the relationship. I
18 don't hear an argument for prejudice otherwise. So obviously
19 mindful of the need to continue to protect the anonymity of the
20 witness, I would allow it.

21 MR. EVERDELL: Yes, your Honor.

22 And I've met with the witness and I've impressed upon
23 her that she should only use the name Jane. And if she's
24 referring to Jane's family members, say the mother or the
25 brothers, she will say it that way, Jane's mother, Jane's

LCGVMAX1

1 brothers. And she will only refer to the soap opera, not the
2 particular name of the soap opera.

3 THE COURT: All right. What else?

4 MR. EVERDELL: I don't think anything from the defense
5 at the moment, your Honor.

6 MR. ROHRBACH: Nothing from the government, your
7 Honor.

8 THE COURT: We have one more juror we're waiting on.

9 Oh, while we have a moment, so I did work out
10 logistics for the charging conference. We can do Saturday at 9
11 a.m. in this courtroom. And as I said, the DE and other
12 courthouse staff will ensure significant public access. We'll
13 have room in the courtroom and in overflow courtrooms for the
14 charging conference.

15 Anything else?

16 MR. EVERDELL: Sorry, I did forget one thing.

17 With respect to those photos, your Honor, if they do
18 get admitted, there's only one copy of each. So my plan on
19 publishing them to the jury would be to just walk down the jury
20 row with the photos so they can see them, because we don't have
21 physical -- we just got them this morning; we don't have copies
22 of the photos.

23 THE COURT: You can't run off some copies?

24 MR. EVERDELL: We can try in the meantime.

25 THE COURT: Okay.

LCGVMAX1

1 MR. EVERDELL: But --

2 THE COURT: I just think we have a standard for how
3 we're doing this; and the need to make some photocopies isn't a
4 sufficient burden to --

5 MR. EVERDELL: Well, we don't really have the
6 resources --

7 MS. COMEY: Your Honor, the government is happy to
8 make the copies.

9 THE COURT: We'll do the copying.

10 MR. EVERDELL: All right. That's fine.

11 I wish we did have a copier in our room, but we don't.

12 MS. STERNHEIM: Judge, may we have a two-minute break?

13 THE COURT: Yes.

14 MS. STERNHEIM: Thank you.

15 THE COURT: We'll adjourn until we have our jury.

16 Thank you.

17 (Recess)

18 THE COURT: All right. We have our jury.

19 Anything to take up before I bring them in?

20 MS. STERNHEIM: Just very quickly, Judge.

21 THE COURT: Sure. Please be seated.

22 MS. STERNHEIM: This has to do with a witness that may
23 be coming in. It may be Dr. Loftus. We would like to be able
24 to use the screen which you can draw on. And the technical
25 people have assisted us in doing it. The only thing is this

LCGVMAX1

1 equipment does not save anything. So I would ask permission
2 that we would be able to take a picture of it for the record.
3 It's a demonstrative; it's not being put into evidence. But if
4 the Court wished it to be part of the record, the only way to
5 preserve it would be by a copy of it.

6 THE COURT: What's an example? Usually you just use
7 words to describe for the record what's being indicated.

8 MS. STERNHEIM: There's an opportunity for her to do a
9 demonstrative for the jury. If we weren't in COVID, she would
10 get up, she would stand before the jury with a whiteboard. We
11 cannot do that under these circumstances. And the equipment is
12 for that very purpose. It's been done in other cases; it's
13 just that this equipment --

14 THE COURT: So it would be like a whiteboard.

15 MS. STERNHEIM: Yes.

16 THE COURT: Whiteboard doesn't come into evidence.

17 MS. STERNHEIM: I'm not saying it's coming into
18 evidence.

19 THE COURT: She can draw on it, but I don't see a need
20 to take a picture.

21 MS. STERNHEIM: I'm only saying if the Court wished
22 there to be a -- part of the record. But if the Court does
23 not, that's fine.

24 THE COURT: I'm sorry, I misunderstood. I thought you
25 were asking for it to be part of the record.

LCGVMAX1

1 MS. STERNHEIM: No. I'm just saying that there's --
2 she will be describing it and we will make sure it gets in the
3 record. But I did not know if the Court wished there to be it
4 as sort of a marked exhibit for identification just for the
5 record, not in the record.

6 THE COURT: I've never done that.

7 MS. STERNHEIM: Then that's fine. I'm just --

8 THE COURT: If somebody requests it, I'm happy to hear
9 the request, but it's not something I've ever --

10 MS. STERNHEIM: Then it's not necessary. I did not
11 know if the Court would prefer that.

12 THE COURT: All right.

13 MR. EVERDELL: Your Honor, if the Court would like, I
14 have just 3500 material for the witness in paper copy.

15 THE COURT: Okay. Thank you.

16 MR. EVERDELL: I also have a copy for the witness
17 which I can put in the box.

18 THE COURT: Yes. Okay.

19 Can we get our jury. Yes. Thank you, Ms. Williams.

20 Who will call the witness, just so I can designate the
21 right person to call the first witness?

22 MR. EVERDELL: I will be calling the first witness.

23 THE COURT: All right. Thank you, Mr. Everdell.

24 MR. EVERDELL: Your Honor, I'll check if the witness
25 is there.

LCGVMAX1

1 THE MARSHAL: Are you ready for her? She's outside.

2 MR. PAGLIUCA: Your Honor, we'll check --

3 THE COURT: Of course. Thank you.

4 Not yet. Thank you.

5 Bring in the jury.

6 (Continued on next page)

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LCGCmax2

Espinosa - direct

1 (Jury present)

2 THE COURT: Thank you, everyone. Please be seated.

3 Good morning, members of the jury. Nice to see you. All
4 right. I hope everyone is well. We will proceed with the next
5 phase of the case.

6 Mr. Everdell, the defense may call its first witness.

7 MR. EVERDELL: Thank you, your Honor. The defense
8 calls Kimberly Espinoza.

9 THE COURT: Cimberly Espinosa may come forward.

10 CIMBERLY ESPINOSA,

11 called as a witness by the Defendant,

12 having been duly sworn, testified as follows:

13 THE COURT: Come forward into the box, you can take
14 your seat, you may remove your mask, and please state and spell
15 your name for the record.

16 THE WITNESS: My name is Cimberly Espinosa, and it's
17 spelled C-i-m-b-e-r-l-y E-s-p-i-n-o-s-a.

18 THE COURT: Thank you. I will ask you, if you can,
19 pull up as close to the mic as you can and please speak
20 directly into the microphone. Thank you.

21 Mr. Everdell, you may inquire.

22 MR. EVERDELL: Thank you, your Honor.

23 DIRECT EXAMINATION

24 BY MR. EVERDELL:

25 Q. Good morning, Ms. Espinosa.

LCGCmax2

Espinosa - direct

1 A. Good morning.

2 Q. Ms. Espinosa, how old are you?

3 A. 55.

4 Q. And where do you live?

5 A. I live in California.

6 Q. How far did you go in school?

7 A. About a year and a half of college.

8 Q. Are you married?

9 A. Yes.

10 Q. And do you work currently?

11 A. Yes.

12 Q. What is your current job?

13 A. I'm an executive assistant to the CEO of a global company.

14 Q. Is that in California?

15 A. Yes.

16 Q. And how long have you been doing that job?

17 A. It will be 10 years.

18 Q. I want to direct your attention now to October of 1996.

19 A. Okay.

20 Q. About how old were you in October 1996?

21 A. 28.

22 Q. And where were you living around that time?

23 A. I was living in Midtown.

24 THE COURT: Pausing for technical issues. Thank you
25 very much. Go ahead, Mr. Everdell.

LCGCmax2

Espinosa - direct

1 MR. EVERDELL: Thank you, your Honor.

2 Q. Ms. Espinosa, I actually want to jump back for a second.
3 You mentioned your current job is an executive assistant for a
4 CEO; is that right?

5 A. Correct.

6 Q. Can you describe generally what you do in that position.

7 A. I am basically the gatekeeper for the CEO. All
8 appointments are scheduled through me, I book a lot of travel,
9 book a lot of meetings. I'm also, I guess, the senior
10 executive assistant supervising about six other executive
11 assistants for the company.

12 Q. Now I will direct your attention back to October of 1996.

13 Say again where you were living around that time.

14 A. Well, I moved from California to New York, and when I first
15 moved to New York, I lived on the Upper East Side. I
16 previously said Midtown, but that's because I moved from the
17 Upper East Side to Midtown during my employment.

18 Q. But you started out on the Upper East Side. Okay.

19 Did you get a job when you came to New York?

20 A. Yes.

21 Q. And what job did you get at that time?

22 A. I was hired by J. Epstein & Co. for the legal team, legal
23 counsel being Jeff Schantz and Darren Indyke. I was hired as
24 the legal assistant, the legal admin.

25 Q. And J Epstein & Co. was whose company?

LCGCmax2

Espinosa - direct

1 A. Jeffrey Epstein's company.

2 Q. And had you held any jobs as of this type of assistant
3 before working for Mr. Epstein?

4 A. Yes. I was previously -- before I came here, I was an
5 executive assistant to the CEO of a small startup technology
6 company for about two years before I moved here.

7 Q. And how did you find the job with Jeffrey Epstein's
8 company?

9 A. One of the papers, either the New York Times or the Daily
10 News, I'm not sure, but it was an ad that I answered or
11 responded to by calling a job agency, and I interviewed with
12 the job agency who sent me to two or three places to interview
13 in a day and one of them was J. Epstein & Co.

14 Q. Did you have to interview with anybody at the J. Epstein
15 company to get the job?

16 A. Yes.

17 Q. Who did you interview with?

18 A. I interviewed with four people. First it was Jeff and
19 Darren themselves --

20 Q. Let me pause you there. Can you say their full names?

21 A. Jeff Schantz and Darren Indyke.

22 Q. Who were they?

23 A. They were the legal counsel representing Jeffrey Epstein.

24 Q. And who else, who were the other two?

25 A. And then I passed the cut, I guess, from Darren and Jeff,

LCGCmax2

Espinosa - direct

1 and was asked to interview with Ghislaine Maxwell.

2 Q. And can you describe that interview.

3 A. Yeah. It was rather unique. She had been running around
4 doing errands and wasn't able to make it up to the office where
5 I had been interviewed with Jeff and Darren, and so she had
6 asked if -- the receptionist asked me if it would be okay if I
7 can come down and have the interview in the back of the sedan
8 that was driven by a chauffeur. So our interview took place
9 driving around Manhattan in the back of a limousine.

10 Q. And how did that interview go?

11 A. It went well. It was a different interview than I had
12 experienced before, so I liked it, it was fun and I liked
13 meeting Ghislaine.

14 Q. Did you meet with anybody else or interview with anybody
15 else after your interview with Ghislaine?

16 A. Yes. After I passed that test, I was allowed to meet with
17 Jeffrey Epstein, who would make the final decision on whether I
18 would be hired or not.

19 Q. And how did that interview go?

20 A. And I interviewed back at the office with Jeffrey Epstein
21 after waiting for a few hours for him. And when he came, we
22 had a normal interview, if will you, and I left. And I found
23 out the next day that I was given a job offer.

24 Q. Now you mentioned that you were -- did you take the job?

25 Okay.

LCGCmax2

Espinosa - direct

1 THE COURT: I'm sorry. Could you state the answer.

2 A. Yes, I did take the job.

3 Q. Be sure to state the answer as we can't do nodding.

4 A. Okay.

5 Q. You mentioned before that the job you got was with the
6 legal counsel with Jeffrey Epstein?

7 A. Yes.

8 Q. Did your job change at any point?

9 A. It did.

10 Q. How did it change?

11 A. One day, Ghislaine's assistant had called in sick or was on
12 vacation a day or -- a day or a week or something and I was
13 filling in for Ghislaine. After my fill-in, she decided that
14 she would like me to support her. So I switched after getting
15 conversations with Jeff and Darren to make sure they were okay
16 that I go and work for Ghislaine instead.

17 Q. And so your position changed at that point?

18 A. Yes.

19 Q. And what was the new position?

20 A. It would be the executive assistant to Ghislaine.

21 Q. And how long did you work as Ghislaine's executive
22 assistant?

23 A. I would say approximately six years.

24 Q. So from roughly when to when in years?

25 A. Probably November of 1996 to the end of the summer of 2002.

LCGCmax2

Espinosa - direct

1 Something like that. Summer to fall.

2 Q. In the roughly six or so years that you worked with
3 Ghislaine, about how much time did you spend with her and work
4 with her?

5 A. I spent a lot of time with her in the office. So she would
6 come into the office almost every day. I was in the office
7 every day. We worked together just about every day.

8 Q. And you mentioned the office. Where was the office?

9 A. The office on 457 Madison Avenue.

10 Q. In the time that you worked with her, did you get to know
11 her during that time?

12 A. Yes.

13 Q. What was your impression of Ghislaine?

14 A. I highly respected Ghislaine. I kind of -- no, not kind
15 of. I looked up to her very much. And I actually learned a
16 lot from her as far as administrative and being able to handle
17 a lot of calls, a lot of duties. It was a very high-volume
18 work -- lots of work to do as far as arrangements to be made.
19 I attribute my career right now as an executive assistant to
20 what I learned at supporting Ghislaine.

21 Q. And how did she treat you as an employee?

22 A. She treated me fair and nice and it was fun.

23 Q. What did you think of your experience working for
24 Ghislaine?

25 A. Well, she was demanding, in a way, where, you know, every

LCGCmax2

Espinosa - direct

1 task that was given needed to be done as soon as possible, if
2 not yesterday, and I enjoyed that challenge. But I was able to
3 do my job and do everything that was needed to be done in a
4 day. So it worked well.

5 Q. Did you have any contact with Ghislaine after you stopped
6 working as her assistant?

7 A. Yes, I did.

8 Q. What sort of contact did you have?

9 A. Kind of milestone contacts, birthday wishes, Christmas
10 wishes. I asked for a couple of letter of references, personal
11 references for future jobs after I left Epstein & Co.

12 Q. You mentioned birthday wishes. Do you remember when
13 Ghislaine's birthday was?

14 A. Absolutely.

15 Q. When was it?

16 A. Christmas day, 12/25.

17 Q. Do you remember what year that was?

18 A. She's about five years older than me, so '61.

19 Q. Would you recognize Ghislaine today?

20 A. Of course.

21 Q. Would you look around the courtroom, please, Ms. Espinosa,
22 and do you see Ghislaine Maxwell in the courtroom today?

23 A. I do.

24 Q. Will you please point her out and identify an article of
25 clothing she's wearing.

LCGCmax2

Espinosa - direct

1 A. She is right across from me right there in what appears to
2 be a purple-hue turtleneck.

3 MR. EVERDELL: Let the record reflect that the witness
4 has identified Ghislaine Maxwell.

5 THE COURT: It may so reflect. Thank you.

6 Q. Ms. Espinosa, when you were working for Jeffrey Epstein's
7 company, where, physically, did you work?

8 A. In the office, 457 Madison.

9 Q. That's in Manhattan?

10 A. Yes.

11 Q. Did you work there the whole time that you were working for
12 Mr. Epstein?

13 A. Yes.

14 Q. Did you work anywhere else?

15 A. Maybe just a handful of times I would work at Ghislaine's
16 residence, but that was towards the end of my career there.

17 Q. And about how much time did you actually spend in
18 Ghislaine's residence, all tolled, roughly?

19 A. Maybe a week or two, max. Not straight. It was just a day
20 here, a day there.

21 Q. Over the course of your whole six years?

22 A. Yup.

23 Q. Did you ever work out of Jeffrey Epstein's residence in
24 Manhattan?

25 A. No.

LCGCmax2

Espinosa - direct

1 Q. What were your typical working hours in the office?

2 A. Typical working hours for me were about 9:30 to 6:30.

3 Q. Now, I want to focus your attention on the time period when
4 you started your job, so the mid to late '90s, '96, '97, '98.

5 Who were the people who worked in the office in that time
6 period?

7 A. We had Jeff Schantz and Darren Indyke, the legal team.

8 There was another attorney, Amanda Milroy. There was an
9 accounting team, Harry Beller, Eric Gany, a woman by the name
10 of Bella, I don't remember her last name. Also another woman
11 named Gee, I don't remember her last name. We had a
12 receptionist, Michelle. Jeffrey Epstein had his executive
13 assistant, at the time was a woman named Maureen when I first
14 started. We had -- did I say the receptionist?

15 Q. You mentioned, I think, Michelle was a receptionist. Do
16 you remember Michelle's last name?

17 A. Healy.

18 Q. Were there any other receptionists you recall?

19 A. Yes, there was a Helen Kim that came after Michelle left.

20 Q. And you mentioned, I think, Mr. Epstein's executive
21 assistants; is that right?

22 A. Yes.

23 Q. Is that separate or the same as the receptionists?

24 A. Separate.

25 Q. And you mentioned a Maureen. Were there any other

LCGCmax2

Espinosa - direct

1 executive assistants that were there during your time in the
2 office?

3 A. Yes, Leslie Roth and Suann Pisap.

4 Q. Who came before who, Suann or Leslie?

5 A. Suann was before Leslie.

6 Q. Was Leslie there when you left?

7 A. Yes.

8 Q. Were there any other people in the office that you recall
9 working there in any of the offices there?

10 A. On a daily basis, I can't remember if there was anybody
11 else there working on a daily basis. We did have other
12 personal assistants come through and hang out, not necessarily
13 all day, but kind of like pit stops. That would be Emmy Taylor
14 and Sarah Kellen.

15 Q. So with respect to Emmy Taylor, I'm focusing your attention
16 on the 1996, '97, '98. Do you recall seeing Emmy Taylor during
17 that time period?

18 A. I don't recall when I first saw her. I don't know. I
19 would say it was the middle of my time there, in the middle of
20 that time.

21 Q. You also mentioned a Sarah Kellen. Do you remember when
22 you started seeing Sarah Kellen?

23 A. That was more towards the end.

24 Q. So in the time period, '96, '97, '98, do you recall seeing
25 Sarah Kellen?

LCGCmax2

Espinosa - direct

1 A. Hard to say, but I don't think so.

2 Q. We'll talk about those folks in a minute.

3 Can you describe the layout of the office space at
4 Madison Avenue from when you get off the elevator.

5 A. Sure. So you get off the elevator and immediately to your
6 left were the restrooms. Immediately in front of you was the
7 accounting team office, then the reception desk would just be
8 kind of pitched to the right. Behind the reception desk was a
9 hallway where the offices were. The legal team sat on the
10 left-side office, and that was followed by Jeffrey's office,
11 which was a corner. Directly next to Jeffrey's office and
12 directly behind the receptionist at the end of the hall would
13 have been Jeffrey Epstein's assistant, and then I sat to the
14 left of Jeffrey Epstein's assistant. So we were, like, in a
15 row. If all doors were open, I could see Jeffrey in the
16 corner, his assistant, myself. And then in my office, which
17 was Ghislaine's office, there were three desks - one was
18 Ghislaine's, one was mine, and one was the legal assistant's.

19 Q. Do you remember the legal assistant's name when you were
20 there?

21 A. Lauren Quitner (ph.).

22 Q. Lauren Quitner?

23 A. Yes.

24 Q. So in the office where you sat and where Ghislaine sat, how
25 many people actually sat in that office?

LCGCmax2

Espinosa - direct

1 A. Three.

2 Q. Were there cubicles or was it a shared space?

3 A. Shared space. Shared open space.

4 Q. In your time there, do you recall Ghislaine having her own
5 private office, ever?

6 A. No.

7 Q. When you started the job, did you have to sign any legal
8 documents or agreements?

9 A. Yes.

10 Q. What did you have to sign?

11 A. A nondisclosure agreement.

12 Q. Did you have any particular reaction -- withdrawn.

13 What did the nondisclosure agreement mean to you?

14 A. Just not to repeat any of my work. My work was my work not
15 to be shared with the privacy and out of respect and privacy
16 for Jeffrey Epstein, you know, not to share who his clients are
17 or anything that I might be privy to.

18 Q. In your work as an executive assistant for other CEOs, did
19 you ever have to sign a nondisclosure agreement for them?

20 A. Yes.

21 Q. That's happened in the past?

22 A. Yes.

23 Q. Did you have any particular reaction to signing these NDAs?

24 A. No.

25 Q. Were you ever given any instructions about how you could or

LCGCmax2

Espinosa - direct

1 could not interact with other employees in the office?

2 A. No.

3 Q. Were you ever given any instructions about how you could or
4 could not interact with Jeffrey Epstein?

5 A. No.

6 Q. I want to talk to you in a little bit more detail about
7 your duties and responsibilities at the office. We'll start
8 first with the job you briefly had as the admin to the lawyers.

9 What were your responsibilities there?

10 A. A lot of photocopying, filing. That was the gist of it.
11 And taking messages for them if they weren't available for a
12 phone call.

13 Q. And do you know what sort of functions the lawyers
14 performed for Mr. Epstein, from your observations?

15 A. I don't know exactly what they performed, but I know that
16 they were pretty important to Jeffrey Epstein.

17 Q. And about how soon after you started your job did you
18 transition to becoming Ghislaine's executive assistant?

19 A. I would say it was within a month. It was kind of quick.

20 Q. What were your responsibilities as Ghislaine's executive
21 assistant?

22 A. Making arrangements. We had kind of a routine where she
23 would come in, I'd sit at her desk, she'd give me a laundry
24 list of tasks to do for the day, people she needed to talk to,
25 things I needed to have shipped, things I needed to have

LCGCmax2

Espinosa - direct

1 purchased, reservations to be made. It could have been a list
2 of anywhere from 25 to 50 things in a day.

3 Q. And what was Ghislaine's employment role in the office,
4 what jobs did she perform?

5 A. She was the estate manager, in my mind. She ran the
6 properties for Jeffrey Epstein.

7 Q. And did you assist her with those jobs?

8 A. I did.

9 Q. And I'll get to the estates in a second, but as compared to
10 the other people in the office, where, in your mind, did
11 Ghislaine would fall in terms of importance?

12 A. Ghislaine was very important to me. She was obviously
13 important to Jeffrey Epstein because of his personal
14 residences. I can't really say in Jeffrey Epstein's eyes what
15 her importance was, but, again, to me, she was quite important.

16 Q. Well, if Ghislaine managed Jeffrey's properties, were there
17 other people in the office who handled other aspects of his
18 life?

19 A. Absolutely.

20 Q. Like who?

21 A. Like his finance people handling the money and his
22 attorneys handling his business affairs.

23 Q. To your knowledge, did Ghislaine have any role in managing
24 those aspects of Jeffrey Epstein's life?

25 A. Not to my knowledge.

LCGCmax2

Espinosa - direct

1 Q. Now you mentioned the properties, right. How many
2 properties did Jeffrey Epstein own when you started working in
3 the office?

4 A. When I started working, he had already owned Zorro Ranch, 9
5 East 71st Street, and El Brillo, I believe.

6 Q. You mentioned Zorro Ranch, where was that?

7 A. That was in New Mexico.

8 Q. 9 East 71st Street was where?

9 A. New York.

10 Q. And El Brillo was where?

11 A. Florida.

12 Q. Did there come a time when he acquired any additional
13 properties while you were there?

14 A. Yes. I believe he acquired a Paris apartment, and he also
15 purchased the island, St. Thomas.

16 Q. Do you remember the name of the island?

17 A. It was Little Saint James, but the name was changed to
18 Little Saint Jeffs.

19 Q. Was that purchased, the island, at the time you were there?

20 A. Yes. I would say probably the middle of my time there, it
21 was purchased, and it was a humongous project.

22 Q. Please describe, if you could, just that particular project
23 of getting the island ready, what was involved in that and what
24 roles did you and Ghislaine perform?

25 MS. POMERANTZ: Objection. Foundation.

LCGCmax2

Espinosa - direct

1 THE COURT: All right. You may inquire. Why don't
2 you start with the latter part of the question.

3 Q. Did you assist Ms. Maxwell in any way with the project.
4 Island?

5 A. Yes.

6 Q. And what sort of things did you assist with?

7 A. There was new construction being done on the island, there
8 were, I think, new swimming pools. But the majority of what I
9 did was furnish the house, furnish the resort style. There
10 was, you know, every house good that you could think of -
11 silverware, glasses, towels, beach towels, linens. We had to
12 ship all of that over, all of the furniture, all of the
13 artwork. We even shipped in sand and palm trees and all kinds
14 of things to get the island to what he wanted it to be.

15 Q. To be clear, you shipped in sand to a tropical island, why
16 was that?

17 A. He wanted more sand on the beach.

18 Q. Palm trees, too?

19 A. Uh-huh.

20 Q. When you started when the island was acquired, was there
21 anything, to your knowledge, on the island or was there nothing
22 on the island?

23 A. I think there may have been one building or something. It
24 was a lot of construction going on. We even had a fire
25 department on the island, a firehouse with a proper firetruck

LCGCmax2

Espinosa - direct

1 and firemen and all of that.

2 Q. Was it part of your job to help Ghislaine do all this?

3 A. It was part of my job to, yes. Ghislaine would tell me who
4 she needed to talk to in a day, whether it be landscapers,
5 designers, interior decorators.

6 Q. So just focusing on that particular project with the
7 island, how big a job was that to get the island up and
8 running?

9 A. It was more than full-time, in my eyes.

10 Q. And how long did that project last?

11 A. Months. I don't even know that it ever finished, to be
12 honest.

13 Q. So just broadly speaking, how big a job, from your
14 observation, how big a job was it for Ghislaine to manage all
15 of these properties for Mr. Epstein?

16 A. It was a huge job.

17 Q. Did she work hard?

18 A. Yes.

19 Q. And in connection with her responsibilities, did she ever
20 have to travel to the properties to manage them?

21 A. Sure.

22 Q. And how often did she travel to do that?

23 A. Well, she traveled on a weekly basis for the most part. I
24 can't say, you know, when she went to each house for what
25 purpose.

LCGCmax2

Espinosa - direct

1 Q. When she did travel, would she always travel with Jeffrey
2 Epstein or would she sometimes travel herself?

3 A. She sometimes traveled herself.

4 Q. Did you ever travel with her?

5 A. No.

6 Q. If Mr. Epstein wanted to travel to one of his properties to
7 visit, what preparation would need to occur before he traveled?

8 A. Well, Jeffrey had -- we always had the houses prepared, all
9 of the houses prepared for wherever he decided he wanted to go.

10 So what needed to happen was there was bread flown in, his
11 favorite bread that he liked. I think we did butter, as well.

12 Make sure that the houses were stocked. There were certain
13 things from New York that he wanted specifically in all of the
14 residences, and it needed to be fresh for his arrival. So on
15 occasion, it wouldn't be odd to ship out this food to each of
16 the residences so that it would be there for whenever he
17 decided to show up or go.

18 Q. And whose job was it to supervise all of these logistics?

19 A. It would be Ghislaine's.

20 Q. And did you assist her with those?

21 A. Absolutely.

22 "Q. Do you recall someone named, I think you mentioned before,
23 Emmy Taylor?

24 A. Yes.

25 Q. Who was Emmy Taylor?

LCGCmax2

Espinosa - direct

1 A. Emmy Taylor was an assistant to Ghislaine. I kind of
2 looked at it more like a personal assistant as opposed to what
3 I did sitting in the office as an executive assistant.

4 Q. Can you describe a little bit about the difference between
5 your job versus what her job was.

6 A. Sure. She would look after the dog, you know, take the
7 dogs for a walk, take it out if it needed, because Ghislaine
8 would bring the dog to the office. She would carry her handbag
9 and her coat and run out and get her coffee or pasta or
10 whatever. So that's what I saw in the office that she did for
11 Ghislaine.

12 Q. Did Emmy work in the office or did she work elsewhere?

13 A. She worked elsewhere. She was sometimes in the office, but
14 not too often.

15 Q. Were you friendly with Emmy Taylor?

16 A. Yes.

17 Q. Ms. Espinosa, how did Mr. Epstein typically travel to his
18 different properties?

19 A. On one of his planes, private planes that he owned.

20 Q. Do you know how many planes he owned around the time you
21 were working for him?

22 A. I think three, three or four maybe.

23 Q. Did you ever fly on his private planes?

24 A. No.

25 Q. Did you ever have any dealings with the pilots about

LCGCmax2

Espinosa - direct

1 flights that were going to take place on the private planes?

2 A. Sure. On occasion I would have to tell them what time
3 wheels up was. Jeffrey might call in and I'd pick up the phone
4 and he'd say, tell Larry wheels up at 8 o'clock to wherever he
5 was going.

6 Q. And who was Larry?

7 A. Larry, one of Jeffrey's pilots.

8 Q. Did Ghislaine ever make a similar call when you were in the
9 office to let Larry know when wheels up was?

10 A. It was directed by Jeffrey Epstein, what time wheels were
11 up. And on occasion, I'm sure Ghislaine also told Larry what
12 time that would be.

13 Q. Who in the office would most typically interact with the
14 pilots about wheels up times and make arrangements for flights?

15 A. It could be any of the assistants, me, Jeffrey's assistant,
16 or Ghislaine herself.

17 Q. And when you arranged the flights or when you had
18 conversations with the pilots, what information did you give
19 the pilots, typically?

20 A. That was it. The time -- they always, you know, the planes
21 were at Teterboro airport, so there was never a question of
22 where they needed to be. It was just what time was wheels up
23 and where were they going.

24 Q. Did you typically have information about the names of the
25 passengers that would be on the flights?

LCGCmax2

Espinosa - direct

1 A. No.

2 Q. Do you know if Mr. Epstein ever traveled with guests on his
3 plane?

4 A. Sure. Yes.

5 Q. Did you typically know the names of the guests that were
6 flying?

7 A. No, not really. Sometimes some of his friends would call
8 and ask for a lift to Florida, something like that, but I don't
9 recall the names or I wouldn't really know what guests were
10 flying at any given time.

11 Q. Did Epstein ever travel on commercial flights?

12 A. Not to my knowledge.

13 Q. Would Ghislaine ever travel on commercial flights?

14 A. Yes.

15 Q. And when would she do that?

16 A. There were times where she would either fly to see family
17 in London or she would fly to Miami a couple times. Couple
18 times she came out to California. Just different -- just when
19 she wasn't with Jeffrey, she would be somewhere else.

20 Q. Did you help arrange those commercial flights?

21 A. Yes.

22 Q. Did you arrange commercial flights for anyone else in the
23 office?

24 A. No, not really that I can recall. Maybe, maybe I did, but
25 I don't remember exactly.

LCGCmax2

Espinosa - direct

1 Q. When you arranged these commercial flights, did you call
2 the airlines directly or did you use a travel service?

3 A. We used a travel agency.

4 Q. And what was the name of that travel agency?

5 A. Shoppers Travel.

6 Q. Do you know where that was located?

7 A. It was in New York, but I don't know where. I never was
8 there in person, just on the phone.

9 Q. As part of your responsibilities as Ghislaine's executive
10 assistant, did you ever book massages for Ms. Maxwell?

11 A. Yes.

12 Q. And where did you book those massages?

13 A. She had her places in SoHo. She liked Bliss Spa, she liked
14 the Red Door, Elizabeth Arden, places like that.

15 Q. Were these professional massage places?

16 A. Yes.

17 Q. Did you ever schedule a massage for Jeffrey Epstein?

18 A. Yes.

19 Q. Do you remember how many times, roughly, you did that?

20 A. Maybe ten my entire time I was there. I don't -- five to
21 ten. A handful of times.

22 Q. Do you remember any of the masseuses he used?

23 A. I do remember a few names. What comes to mind is there was
24 a Lydia, a Monica. I don't really remember. It's hard for me
25 to recall off the top of my head, but if I hear them that's

LCGCmax2

Espinosa - direct

1 when I'm like, oh, I remember that name.

2 Q. Were these people professional masseuses?

3 A. Yeah.

4 Q. Did you ever get a massage yourself?

5 A. I did.

6 Q. Do you remember who gave you that massage?

7 A. Yes, that was Sophie Biddle.

8 Q. Was that a masseuse that Mr. Epstein used?

9 A. Yes.

10 Q. Were you ever inside of Mr. Epstein's residence in New
11 York?

12 A. I did get a tour when I first started. I think I did meet
13 Ghislaine there on occasion once or twice to either drop off
14 something or retrieve something and take it back to the office.

15 Q. And where was the residence?

16 A. 9 East 71st Street.

17 Q. Is that on the Upper East Side?

18 A. I don't know if that's considered the Upper East Side, but,
19 yes, it was right off the park, Central Park.

20 Q. Were you ever in Ghislaine's residence?

21 A. Yes.

22 Q. Did she live in the same residence when you worked for her
23 or more than one residence?

24 A. She had more than one residence or she had moved. She was
25 first on the Upper East Side and then she moved to 65th Street.

LCGCmax2

Espinosa - direct

1 Q. Do you remember roughly where on the Upper East Side she
2 was living when you started the job?

3 A. I want to say it was 84th Street. I lived on 88th Street,
4 so I remember kind of feeling like we were in the same
5 neighborhood.

6 Q. And do you remember roughly when she moved to 65th Street?

7 A. I would say that would be during the middle of my time
8 there, maybe 2000, late '90s, early 2000.

9 Q. And the 81st Street residence, what kind of residence was
10 that?

11 A. What kind of residence?

12 Q. Was it a townhouse or an apartment?

13 A. It was a townhouse with many levels.

14 Q. Was that the 84th Street one or the 65th Street one?

15 A. No, I'm sorry. I was thinking that we were talking about
16 Jeffrey Epstein's on 71st Street. So now we went back to
17 Ghislaine?

18 Q. Yes. Let me be clear. I'm asking you about Ghislaine's
19 different residences, you mentioned two, one on 84th Street,
20 one on 64th Street?

21 A. Correct.

22 Q. So let me first ask you about the 84th Street residence.
23 What kind of a residence was that?

24 A. That was a townhouse-type thing. Maybe it was an
25 apartment. It was so long ago, I can't really recall that, but

LCGCmax2

Espinosa - direct

1 I do recall her residence on 65th Street.

2 Q. Okay. What do you recall about the residence on 65th
3 Street?

4 A. That was a townhouse with, I think, three levels.

5 Q. And to your knowledge, did Ghislaine always retain her own
6 residence in New York while you were at your job?

7 A. Yes.

8 Q. To your knowledge, did she ever reside with Jeffrey
9 Epstein?

10 A. No.

11 Q. Are you familiar with a residence at 44 Kinnerton Street?

12 A. Yes.

13 Q. Whose residence was that?

14 A. Ghislaine's.

15 Q. And what city was that in?

16 A. London.

17 MS. POMERANTZ: Objection. Foundation, your Honor.

18 THE COURT: Sustained.

19 Q. Have you ever been to that residence?

20 A. Yes.

21 Q. When were you in that residence?

22 A. Three years ago.

23 Q. So do you know who owned that residence at the time you
24 were there?

25 MS. POMERANTZ: Objection. Foundation.

LCGCmax2

Espinosa - direct

1 THE COURT: I'll take yes or no to this question and
2 then sustain.

3 MS. POMERANTZ: I should also just say hearsay, your
4 Honor.

5 THE COURT: I'll take yes or no to the question, do
6 you know who owned the residence at the time that you were
7 there.

8 A. I --

9 THE COURT: Just yes or no.

10 A. No.

11 Q. How was it that you were at that residence three years ago?

12 A. It was my first trip to Europe and I reached out to
13 Ghislaine to ask her if I could stay there.

14 Q. And so you were inside while you were there?

15 A. Yes.

16 Q. Was there a massage room in that residence when you were
17 there?

18 A. No.

19 Q. I want to jump back to your work in the office a bit.

20 From your work in the office, do you know whether
21 Epstein gave to charity?

22 A. He did give to charity.

23 MS. POMERANTZ: Objection, your Honor.

24 THE COURT: I'll allow it. What's the next question?

25 MR. EVERDELL: What organizations did he give to.

LCGCmax2

Espinosa - direct

1 THE COURT: I'll sustain with respect to that.

2 Q. Did he engage in any other types of giving?

3 A. Yes.

4 Q. What did you observe him -- what types of giving did you
5 observe him doing?

6 A. I know that he paid for some of the employees' kids'
7 education. He was -- I believe that he also paid for other
8 people's educations. He was a giver. He was generous and I
9 always knew him to be donating to charities and just being a
10 kind person.

11 Q. Did Epstein ever give you any gifts?

12 A. He did give me the massage a couple times. And, also, he
13 had paid for a personal trainer for me to have. I guess that
14 was a gift. I kind of thought of it more as an employee perk.
15 I don't really think he gave me any gifts, other than when I
16 left. My departure, I was given a watch.

17 Q. Were there any special events he treated you to?

18 A. Yes. That was going to The Lion King.

19 Q. And was this the Broadway show or was this the movie?

20 A. The Broadway show.

21 Q. And about when did that happen?

22 A. I believe that's when the show first came out, it was a hot
23 ticket, and I recall him being friendly with the producer of
24 the show. And during a time of a month or two, he was sending
25 a lot of people to The Lion King.

LCGCmax2

Espinosa - direct

1 Q. And that included yourself?

2 A. Uh-huh.

3 Q. And about how soon after the show opened, in your
4 recollection, was he handing out these tickets?

5 A. That I can't say. I'm not sure.

6 Q. But you recall it being a hot ticket?

7 A. Oh, yeah. It was new. It was a new show.

8 Q. Do you recall anybody else that he gave Lion King tickets
9 to?

10 A. I feel like he gave them to almost all of the employees if
11 they wanted. It was just something that he was giving out at
12 that time. I don't really recall who else.

13 Q. I'm going to ask you a little bit more about the office.

14 Did Epstein ever receive visitors in the office?

15 A. Yes.

16 Q. Were any of these visitors female?

17 A. Yes.

18 Q. I want to show you on the screen, this is an exhibit that's
19 already admitted, Government Exhibit 12, but I believe it's
20 admitted under seal. So if we can just display it --

21 MR. EVERDELL: May I confer, your Honor?

22 THE COURT: You may.

23 MR. EVERDELL: All right. So if we can just display
24 Government Exhibit 12 for the Court, the deputy, and the
25 witness only. This is already admitted under seal.

LCGCmax2

Espinosa - direct

1 Q. Do you see that document in front of you?

2 A. Yes, I do.

3 Q. Now, without saying the name of that person out loud, do
4 you recognize the name of the person on that document?

5 A. Yes, I do.

6 Q. I'm going to refer to that person as Jane and you should,
7 too. Okay?

8 A. Okay.

9 MR. EVERDELL: You can take that down now.

10 Q. Ms. Espinosa, do you ever recall seeing Jane in the office?

11 A. Yes.

12 Q. How old did she appear to you to be when you first saw her?

13 A. Probably 18.

14 Q. And about when do you recall first seeing Jane in the
15 office?

16 A. I remember seeing Jane in the office with her mother.

17 Q. And about when do you recall that happening for the first
18 time?

19 A. Probably the beginning to middle of my time there.

20 Q. And about how many times did Jane visit the office, to your
21 recollection?

22 A. There was a few times. I can't really say how many times,
23 but I would say maybe five.

24 Q. And you mentioned Jane's mother. Do you recall how many
25 times Jane's mother came with her to the office?

LCGCmax2

Espinosa - direct

1 A. I don't recall, but I know that Jane's mother called the
2 office a lot because I spoke to her a lot on the phone.

3 Q. About how often was Jane's mother calling the office?

4 A. Hard to say, but I want to say there was, you know, a
5 couple months where it was a lot.

6 Q. And who was she asking to speak to when Jane's mother
7 called the office?

8 A. Jeffrey Epstein.

9 Q. What, generally, do you recall about Jane and Jane's mother
10 and their interactions with Mr. Epstein in the office?

11 A. Well, Jane's mother had mentioned that her daughter --

12 MS. POMERANTZ: Objection, your Honor. Hearsay.

13 MR. EVERDELL: It's not offered for the truth, your
14 Honor.

15 THE COURT: Just a moment. I'll need a proffer.

16 (Continued on next page)

LCGCmax2

Espinosa - direct

1 (At the sidebar)

2 MR. EVERDELL: Your Honor, I anticipate the witness is
3 going to say that Jane's mother referred to Jane as Epstein's
4 goddaughter and that that actually caused a reaction, that
5 people in the office treated her a certain way because that's
6 how she represented Jane to be. I'm not offering it for the
7 truth, it's simply the effect on this listener and how she
8 responded to Jane's mother when she was in the office.

9 MS. POMERANTZ: No objection.

10 THE COURT: Do you want a limiting?

11 MS. POMERANTZ: It's fine, your Honor.

12 THE COURT: Do you want a limiting?

13 MR. EVERDELL: I don't think so your Honor.

14 (Continued on next page)
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LCGCmax2

Espinosa - direct

1 (In open court)

2 MS. POMERANTZ: Objection withdrawn, your Honor.

3 BY MR. EVERDELL:

4 Q. Let me ask you this, Ms. Espinosa, how did Jane's mother
5 refer to Jane among the people in the office?

6 A. Jane's mother said --

7 THE COURT: Could you pull up to the mic, please.

8 A. Jane's mother said that Jane was Jeffrey's goddaughter.

9 Q. And how did that, if at all, affect the interactions of the
10 people in the office with Jane and Jane's mother?

11 A. Well, I know from myself and the girls that worked in the
12 office, you know, she was treated with the utmost respect, kind
13 of considered her family of Jeffrey's. So, you know, we always
14 treated everyone that came in with courtesy and professionalism
15 and respect, but given that we thought Jane was the
16 goddaughter, she was just a little extra special.

17 Q. Did Jane have any siblings?

18 A. Yes.

19 Q. Were they brothers, sisters, do you remember?

20 A. Two brothers.

21 Q. Again without saying their names, did they ever visit the
22 office?

23 A. I don't recall.

24 Q. About how much contact would Jane's mother have with
25 Epstein during the time period when they were in contact?

LCGCmax2

Espinosa - direct

1 MS. POMERANTZ: Objection, your Honor. Foundation.

2 THE COURT: Sustained.

3 Q. You said you received calls from Jane's mother; right?

4 A. Uh-huh.

5 Q. And you said that she sometimes visited the office; is that
6 right?

7 A. Correct.

8 Q. Do you recall over what span of time this occurred?

9 A. No.

10 Q. Do you know if Jane ever traveled on Mr. Epstein's planes?

11 A. I don't know.

12 Q. What was your impression of the relationship between Jane
13 and Epstein?

14 MS. POMERANTZ: Objection.

15 THE COURT: One word, grounds.

16 MS. POMERANTZ: Foundation.

17 THE COURT: You can ask a foundation question.

18 Q. Did you ever see Jane interact with Epstein in the office?

19 A. Yes.

20 Q. And how often did you see that interaction, how many times?

21 A. Maybe three or four.

22 Q. Based on those three or four interactions, what was your
23 impression of the relationship between Jane and Epstein?

24 A. I felt it was a loving relationship.

25 Q. Did there come a time when Jane stopped visiting the

LCGCmax2

Espinosa - direct

1 office?

2 A. Yes.

3 Q. Do you know why that was?

4 A. I think it was because she went to go work in California
5 for a soap opera.

6 Q. And how do you know that she ended up working for a soap
7 opera?

8 A. She told me and I also saw it myself, because it's one of
9 my soap operas I watched my entire life.

10 Q. Are you a fan of this particular soap opera?

11 A. Big time.

12 Q. And did you see Jane on the soap opera?

13 A. Yes.

14 Q. After she moved to LA and was on the soap opera, did you
15 have any continuing contact with Jane?

16 A. Only when she would call the office.

17 Q. Any other type of contact with Jane after she stopped
18 coming to the office and was in LA?

19 A. Yes. She sent me a little envelope with headshots, signed
20 headshots of the cast from the soap opera, a few single
21 headshots and then the whole cast all signed.

22 Q. Is that something that you asked for or did she send that
23 to you as a gift?

24 A. I think it was a gift.

25 Q. Do you remember roughly when she sent you those headshots?

LCGCmax2

Espinosa - direct

1 A. I don't recall. I don't know. I've held onto them for
2 very many years.

3 MR. EVERDELL: One moment, your Honor.

4 Your Honor, I would like to approach the witness and
5 show her some exhibits marked for identification. I have a
6 copy for the Court, as well.

7 THE COURT: Okay. Marked for identification as?

8 MR. EVERDELL: Marked for identification as
9 defendant's CE3, CE4, CE5, CE6, CE7, and CE8.

10 May I approach, your Honor?

11 THE COURT: You may.

12 BY MR. EVERDELL:

13 Q. Ms. Espinosa, if you could take the documents I just handed
14 you and look at them, the documents that are marked for
15 identification as CE3 through CE8.

16 Have you had the chance to look at them?

17 A. Yes.

18 Q. Do you recognize what those are?

19 A. Yes.

20 Q. Sorry. I couldn't hear you.

21 A. Yes.

22 Q. And what are they?

23 A. They are the headshots of three of the cast members and
24 then a group cast member shot.

25 Q. And is the envelope also there, too?

LCGCmax2

Espinosa - direct

1 A. The envelope is here, yes.

2 Q. Are they the headshots that were sent to you and is that
3 the envelope that they were sent in?

4 A. Yes.

5 Q. And how do you recognize these?

6 A. They're mine. I've had them forever.

7 Q. Have you had them in your possession since you received
8 them?

9 A. Yes.

10 Q. And are they in the same or substantially the same
11 condition as when you first received them?

12 A. Yes.

13 MR. EVERDELL: Your Honor, at this time, the defense
14 moves to admit CE3 through CE8, temporarily under seal so we
15 can apply appropriate redactions to protect the privacy
16 interests of witnesses.

17 MS. POMERANTZ: No objection, your Honor.

18 THE COURT: CE3 through 8 are admitted temporarily
19 under seal for the purpose of protecting the anonymity of a
20 witness who I've permitted to testify under pseudonym.

21 (Defendant's Exhibits CE3 through CE8 received in
22 evidence)

23 MR. EVERDELL: Correct, your Honor. Your Honor, at
24 this time, I do have copies for the jurors if the Court will
25 permit me to hand them out.

LCGCmax2

Espinosa - direct

1 THE COURT: Thank you.

2 Q. Ms. Espinosa, let's first take a look --

3 THE COURT: I think they're waiting for me. Would you
4 like the jurors to look?

5 MR. EVERDELL: Yes. May I publish this to the jurors,
6 your Honor?

7 THE COURT: So the jurors may look at the exhibits in
8 the folder. Go ahead.

9 BY MR. EVERDELL:

10 Q. Look first at CE3. Do you see what that is? Actually, can
11 you hold that up? What is CE3?

12 A. CE3 is a manilla envelope addressed to Ms. Cimberly, care
13 of Epstein & Co., 457 Madison Avenue, from Jane.

14 Q. Is there a date on the envelope?

15 A. You can't read what the postage machine -- you can't see
16 it.

17 THE COURT: Just my copy of the envelope doesn't have
18 a mark.

19 MR. EVERDELL: Understood. The physical copy of the
20 exhibit is what has the sticker on it. I don't know if we were
21 able to copy the entire thing because it's a large envelope.

22 THE COURT: Do you want to direct the jurors to look
23 at a photocopy of an envelope and that is what you're
24 indicating is CE3?

25 MR. EVERDELL: Well, your Honor, I'm actually having

LCGCmax2

Espinosa - direct

1 the witness hold up the envelope itself, which is CE3. The
2 photocopies are just copies of the envelope.

3 THE WITNESS: It says CE3.

4 THE COURT: Got it.

5 Q. Just hold up the envelope so the jurors can see it. Is
6 that the envelope that the headshots came in?

7 A. Yes.

8 Q. And can you tell from the envelope what the postmark date
9 is or is it too hard to tell at this point?

10 A. Can't tell.

11 Q. You can set that down.

12 Let's look at CE4, and I don't want you to hold that
13 up, but you have the original photograph there; correct?

14 A. Yes.

15 Q. And the jurors have photocopies.

16 First of all, who is in that photograph, using only
17 the names we've agreed upon?

18 A. Jane.

19 Q. And is there an inscription on the front of that
20 photograph?

21 A. There is.

22 Q. Without reading the name --

23 MR. EVERDELL: One moment, your Honor.

24 Q. Without reading the name on the inscription, can you just
25 read out the inscription on the front of the photograph?

LCGCmax2

Espinosa - direct

1 A. To Cimberly, with love, Jane.

2 Q. Is there anything written on the back of the photograph
3 that is CE4?

4 A. Yes.

5 Q. Again, substituting the name we've agreed upon, can you
6 read out that inscription?

7 A. Dearest Cimberly, thank you for always being so sweet and
8 such a great help. Take care. Jane.

9 Q. And just looking quickly at the others in succession, which
10 is CE5, CE6, CE7, and CE8, what are those?

11 A. They are photos, a group shot of the cast of the soap opera
12 and three separate headshots of three of the actors.

13 Q. And those actors are not Jane; right?

14 A. Correct.

15 Q. And just looking briefly at CE5, do you see Jane in that
16 group shot?

17 A. Yes.

18 Q. And where do you see her?

19 A. Middle row, all the way to the right.

20 Q. So are these photographs in the envelope we just looked at
21 what Jane sent you after she started working at the soap opera?

22 A. Yes.

23 Q. Thank you. You can put those away now.

24 MR. EVERDELL: With the Court's permission, I'll have
25 the jurors put those down.

LCGCmax2

Espinosa - direct

1 THE COURT: Yes, please. You can put those under your
2 seats. Thank you so much.

3 MR. EVERDELL: Your Honor, shall I continue? Okay.

4 BY MR. EVERDELL:

5 Q. Ms. Espinosa, are you familiar with the address 301 East
6 66th Street?

7 A. Yes.

8 Q. And what is at that address?

9 A. That is an apartment building.

10 Q. Did you have any job responsibilities with respect to that
11 apartment building?

12 A. Yes.

13 Q. Can you describe what those were?

14 A. Sure. First it was managing the scheduling of the
15 apartments, like a calendar, if you will. There was
16 approximately a dozen apartments that Jeffrey Epstein owned,
17 and there were employees that stayed there, family, friends,
18 guests.

19 Q. And when you say you managed the calendar, what do you mean
20 by that?

21 A. Well, that we had a notebook that told us who was staying
22 in what apartment on any day, that way we would know what
23 apartment was available to give to someone else.

24 Q. And was your responsibility to manage that calendar?

25 A. Yes.

LCGCmax2

Espinosa - direct

1 Q. Do you remember any of the names of the people who had
2 regular apartments in that building, who regularly stayed
3 there?

4 A. Yes.

5 Q. Who were some of those people?

6 A. Jeffrey Epstein's pilots had apartments there. Jane stayed
7 there, Jane's mother, Jane's brothers. We had -- let's see.
8 There were some other executives that Jeffrey knew. Can't
9 really recall other names. Shelly Lewis had an apartment there
10 for a while.

11 Q. Who was Shelly Lewis?

12 A. Shelly was one of Jeffrey's friends, I guess.

13 Q. Okay. Do you know if Emmy Taylor ever had an apartment
14 there?

15 A. Emmy Taylor had an apartment there.

16 (Continued on next page)

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LCGVMAX3

Espinosa - direct

1 BY MR. EVERDELL:

2 Q. Now, you mentioned that Jane and Jane's mother and Jane's
3 brothers used the apartments; is that right?

4 A. Yes.

5 Q. Were they regular users of the apartments or did they use
6 it every -- how many times did they use it?

7 A. They were regular for a duration of time, and then it was
8 come and go, specifically for the brothers and the mother.

9 Q. About when do you recall Jane and Jane's mother and
10 brothers using the apartments in New York?

11 A. It was right around when I had met her. Again, I don't
12 recall the date, but I know that it was towards the beginning
13 of my -- beginning to middle of my term there.

14 Q. All right. So if the beginning of your term was the end of
15 1996 --

16 A. Right.

17 Q. -- what, roughly, years are we talking about here, if you
18 can estimate?

19 A. Maybe late '90s, early 2000.

20 Q. Okay. The best of your recollection?

21 A. Yeah.

22 Q. All right. Let's discuss your observations of the
23 relationship between Epstein and Ghislaine.

24 As part of working in the office with Ghislaine, were
25 you able to observe Jeffrey Epstein and Ghislaine interacting

LCGVMAX3

Espinosa - direct

1 with each other?

2 A. Sure.

3 Q. And when you first started in your job in 1996, what was
4 your impression of the relationship between Epstein and
5 Ghislaine?

6 A. I thought they were a couple.

7 Q. And what gave you that impression?

8 A. Just their interaction together. They were a little
9 flirty; and I just knew they were a couple, behaved like a
10 couple.

11 Q. Did their romantic relationship change at all during the
12 time you worked for Epstein?

13 A. Yes.

14 Q. How so?

15 A. They just kind of went their separate ways. Seems like
16 Ghislaine moved on. I know that she started dating --

17 MS. POMERANTZ: Objection. Foundation.

18 THE COURT: Sustained.

19 Q. What, if anything, did you observe at the time that
20 indicated to you that the romantic relationship was changing?

21 A. Ghislaine started dating.

22 Q. Dating other men?

23 A. Yes, other men.

24 Q. Okay. Anything else?

25 A. Well, they would not show up at the office around the same

LCGVMAX3

Espinosa - direct

1 time or leave together, things like that.

2 Q. Okay. And roughly when do you recall noticing that
3 Ghislaine was dating other men and not coming to the office as
4 much?

5 A. That would be probably the last two years of my employment.

6 Q. Now, you mentioned that Epstein had visitors come to his
7 office, right?

8 A. Mm-hmm.

9 Q. And I think you said some of these were female.

10 A. Mm-hmm.

11 Q. We've talked about Jane. But apart from Jane, how old were
12 these females who were visiting Jeffrey Epstein in the office
13 during your time there?

14 A. I don't know how old they were.

15 Q. Roughly, how old do they appear to you to be?

16 A. Eighteen and over. Young women.

17 Q. And what contact did you see them -- withdrawn.

18 Do you remember some of the names of these women who
19 came and visited Epstein in the office?

20 A. Yes.

21 Q. Sorry?

22 A. I do remember.

23 Q. What names do you recall?

24 A. Celina Midelfart; Shelly Lewis; Jane, of course; Gwendolyn
25 Beck.

LCGVMAX3

Espinosa - direct

1 Q. Well --

2 A. There were others. There were others, I just can't
3 remember.

4 Q. And what kind of contact did they have with Jeffrey Epstein
5 that you observed when they came into the office?

6 A. I didn't really observe the guests and him together too
7 often, because most of the time it was them being escorted to
8 his office. And the door would shut and they would visit in
9 his office, and I wouldn't see that.

10 Q. Okay. Now, you mentioned Celina Midelfart before.

11 A. Yes.

12 Q. Were you ever asked to do anything for Celina Midelfart?

13 A. Yes.

14 Q. What was that?

15 A. Send her flowers.

16 Q. And what kind of flowers were these?

17 A. I recall an orchid at one time. There might have been
18 another bouquet another time.

19 Q. Based on your -- the tasks you were given for her and your
20 observations of her, did you ever get the impression that there
21 was a romantic relationship?

22 MS. POMERANTZ: Objection, your Honor.

23 THE COURT: One-word grounds.

24 MS. POMERANTZ: Calls for speculation.

25 THE COURT: Overruled.

LCGVMAX3

Espinosa - direct

1 Q. Ms. Espinosa, based on the tasks you were given for
2 Ms. Midelfart and your observations of her with Epstein, what,
3 if any, sense did you have of their relationship with each
4 other, put it that way?

5 A. I felt like Jeffrey liked her very much; I felt like they
6 were a couple. They were -- yeah, they were together, a
7 couple.

8 Q. And did this happen either during or after the time when it
9 appeared to you that Ghislaine was in a romantic relationship
10 with Epstein?

11 A. I feel like it was at the very beginning of my employment,
12 so I -- you know, being new, it could have been concurrent for
13 a little bit of time.

14 Q. Do you know whether or not Ghislaine knew about, for
15 example, you buying the flowers for Celina Midelfart?

16 A. No, she didn't know.

17 MS. POMERANTZ: Objection.

18 THE COURT: Just a moment.

19 I'll allow it.

20 Q. Do you know whether or not Ghislaine Maxwell knew about you
21 buying flowers for Celina Midelfart on behalf of Jeffrey
22 Epstein?

23 A. She did not know.

24 Q. You also mentioned Shelly Lewis before.

25 A. Yes.

LCGVMAX3

Espinosa - direct

1 Q. Do you remember what nationality she was?

2 A. English.

3 Q. Did she speak in a British accent?

4 A. Yes.

5 Q. All right. I want to direct your attention now to the
6 final years of your employment, okay, so roughly 2000 to 2002,
7 all right?

8 Were Epstein and Ghislaine still involved in a
9 romantic relationship or was that over by this time?

10 A. I think it was over by that time.

11 Q. Was Ghislaine still working for Epstein at that time?

12 A. Yes.

13 Q. Did her employment role for Epstein stay the same at this
14 time or did it change at this time?

15 A. Stayed the same.

16 Q. Okay. Did she have as much involvement in his affairs or
17 were other people working for Epstein as well?

18 A. Well, there were other people working for Epstein. I don't
19 know.

20 Q. Let me ask this: How often was Ghislaine coming into the
21 office in the latter two years of your employment?

22 A. Not often. It started -- you know, at first it was almost
23 every day; then it became a few times a week; and then it
24 was -- towards the end it was full-time she wasn't coming into
25 the office.

LCGVMAX3

Espinosa - direct

1 Q. Okay. Was there anyone else who was in the office who, for
2 example, was sitting in the office where Ghislaine used to sit?

3 A. That would have been Sarah Kellen.

4 Q. Sarah who?

5 A. Kellen.

6 Q. Okay. I want to show you what's already in evidence as
7 Government's Exhibit 327.

8 MR. EVERDELL: If we can put that on the screen.

9 THE COURT: You may.

10 MR. EVERDELL: Thank you, your Honor.

11 For the Court, deputy, the witness, and the jurors,
12 with the Court's permission.

13 THE COURT: It's a public document; correct?

14 MR. EVERDELL: It's not under seal, your Honor, as far
15 as I know.

16 THE COURT: Correct?

17 MS. POMERANTZ: I believe that's correct, your Honor.

18 MR. EVERDELL: We'll just confer with the government.

19 MS. POMERANTZ: Just take a quick look, your Honor.

20 It's fine, your Honor. Thank you.

21 THE COURT: Okay. So you can publish.

22 MR. EVERDELL: Thank you, your Honor.

23 So we'll also put it on the jurors' screens, if we
24 could.

25 BY MR. EVERDELL:

LCGVMAX3

Espinosa - direct

1 Q. Ms. Espinosa, do you see the person in that photograph,
2 Government's Exhibit 327?

3 A. Yes.

4 Q. Do you recognize who that is?

5 A. Yes.

6 Q. Who is that?

7 A. That's Sarah Kellen.

8 Q. Do you remember --

9 MR. EVERDELL: We can put that down now, with the
10 Court's permission.

11 THE COURT: Yes. Thank you.

12 Q. Do you remember when Sarah Kellen was hired, when she first
13 arrived?

14 A. I don't remember the date.

15 Q. Was it towards the beginning or towards the end of your
16 employment, if you know?

17 A. Towards the end.

18 Q. Was it in the time period we're discussing now, 2000 to
19 2002?

20 A. Yes.

21 Q. What was her job for Epstein?

22 A. I'm not sure what her job was, but she did accompany
23 Jeffrey around to the properties and was basically where he
24 was. I didn't really work with her much in the office, so I
25 don't know what her -- her job was.

LCGVMAX3

Espinosa - direct

1 Q. From your perspective, did she assist Epstein?

2 A. Yes.

3 Q. Okay. Now, was she, in your mind, Epstein's assistant or
4 was she Ghislaine's assistant?

5 A. Epstein's assistant.

6 Q. Okay. Who was Ghislaine's assistant?

7 A. I was still there. I was Ghislaine's assistant.

8 Q. Okay. Now, in the 2000s, did Ghislaine still travel with
9 Epstein to the properties?

10 A. I believe so.

11 Q. Okay. Do you know, did she travel to Palm Beach
12 occasionally?

13 A. Sure.

14 Q. Did you help her arrange her travel when she traveled to
15 Florida?

16 A. Sometimes.

17 Q. And when she traveled to Florida at this time, did she
18 always go to Palm Beach or did she go to other locations?

19 A. She visited other locations.

20 Q. Where did she --

21 A. Miami.

22 Q. I'm sorry?

23 A. Miami, Florida. Miami.

24 Q. And how do you know that she was going to Miami?

25 A. Because she asked me to book a flight for her to Miami.

LCGVMAX3

Espinosa - direct

1 Q. Did you help her arrange where she stayed in Miami too?

2 A. I sort of recall, but I -- I -- it was a hotel. I don't
3 remember the name.

4 Q. Okay. But your recollection is you booked hotels for her
5 to stay in in Miami when she was traveling to Florida?

6 A. Yes. I also think she had a friend there that she may have
7 stayed in -- in the condo or whatever it was.

8 Q. So when she was traveling to Florida around this time, was
9 she always staying at Epstein's residence or did she stay at
10 hotels?

11 MS. POMERANTZ: Objection. Foundation.

12 THE COURT: Sustained.

13 Q. Fair to say you booked hotels in Miami for her travel to
14 Florida around this time, right?

15 A. Correct.

16 Q. Now, you mentioned that Ghislaine was dating other men in
17 the 2000s, right?

18 A. Mm-hmm.

19 Q. Are you familiar with a man named Ted Waitt?

20 A. Yes.

21 Q. Who is Ted Waitt?

22 A. Ted Waitt is somebody that she dated and eventually became
23 a couple with.

24 Q. All right.

25 And do you know who Ted Waitt was, what his job was?

LCGVMAX3

Espinosa - direct

1 A. I didn't know what his job was or who he was until I met
2 him personally after I had already left Epstein and Company.

3 Q. When did you meet Ted Waitt personally?

4 A. Boy. 2009, '8, something like that. I don't recall the
5 year.

6 Q. And was Ghislaine still with Ted Waitt as a couple at that
7 time?

8 A. Yes.

9 Q. Okay. And that was how many years after you left your
10 employment with Epstein, roughly?

11 A. Maybe three years, something like that.

12 Q. I think you said you left in 2002; is that right?

13 A. Correct.

14 Q. And when do you think you met Ted Waitt?

15 A. Before 2010. That's all I can really say.

16 Q. And why was it that you were meeting Ted Waitt at that
17 time?

18 A. For a job interview.

19 Q. Okay. Did Ghislaine help to arrange that job interview?

20 A. Yes.

21 Q. Okay. And what was the job?

22 A. It was like an estate manager.

23 Q. Did you end up getting the job?

24 A. No.

25 Q. Okay. Do you know if Ted Waitt had any children at the

LCGVMAX3

Espinosa - direct

1 time you met with him?

2 A. I don't --

3 MS. POMERANTZ: Objection.

4 A. I don't know.

5 THE COURT: The response was "I don't know."

6 I'll allow that. Move on.

7 Q. And just jumping back, do you recall roughly when it was
8 that Ghislaine started seeing Ted Waitt as a couple?

9 A. Well, it was before I left in 2002. Maybe --

10 THE COURT: Could you speak into the mic?

11 A. It was before I left in 2002, so probably 2001 or so.

12 Q. The best guess from your recollection?

13 A. Best guess.

14 THE COURT: Mr. Everdell, we'll break here for the
15 morning, unless --

16 MR. EVERDELL: Actually, if I could just have one
17 moment, your Honor.

18 THE COURT: Sure.

19 (Counsel conferred with defendant)

20 MR. EVERDELL: I think it's a good time to take a
21 break, your Honor, if we could.

22 THE COURT: How much longer do you anticipate?

23 MR. EVERDELL: I don't think I have very much, but I
24 just wanted the chance to confer.

25 THE COURT: All right. So we'll break for 15 minutes,

LCGVMAX3

Espinosa - direct

1 members of the jury. See you shortly. Thank you.

2 (Jury not present)

3 THE COURT: Ms. Espinosa, you may step down and out
4 for the break. Thank you.

5 (Witness not present)

6 THE COURT: Counsel, matters to take up before the
7 break?

8 MS. POMERANTZ: Not from the government.

9 MR. EVERDELL: Nothing from the defense.

10 THE COURT: I'll see you in ten in case there's
11 anything to discuss before we resume.

12 (Recess)

13 THE COURT: Anything to take up?

14 MR. EVERDELL: Not from the defense, your Honor.

15 MS. POMERANTZ: Not from the government. Thank you.

16 THE COURT: All right. We can bring the witness back
17 and we can get the jury.

18 (Witness present)

19 (Jury present)

20 THE COURT: All right.

21 Thank you, members of the jury.

22 Mr. Everdell, you may continue with your direct
23 examination of Ms. Espinosa.

24 Ms. Espinosa, I remind you, you are under oath.

25 Go ahead, Mr. Everdell.

LCGVMAX3

Espinosa - direct

1 MR. EVERDELL: Thank you, your Honor.

2 BY MR. EVERDELL:

3 Q. Ms. Espinosa, directing your attention again to the end of
4 your employment term, okay, in the 2000s, when -- the time
5 period when you said Ghislaine was moving on, right, did you
6 ever assist her during that time in hiring any other personnel
7 at the office?

8 A. I don't remember.

9 Q. Who was taking care of the properties, Epstein's
10 properties, on a day-to-day basis at the properties?

11 A. Sarah Kellen.

12 Q. Did you ever assist in hiring any other people to help
13 assist with properties at that time?

14 A. Not that I recall.

15 Q. Okay. But your recollection is that Sarah Kellen was
16 managing the properties at that time?

17 A. Mm-hmm.

18 Q. Speaking of Sarah Kellen, do you know if she ever got
19 married?

20 A. I heard that she got married.

21 MS. POMERANTZ: Objection, your Honor.

22 THE COURT: Sustained.

23 The jury will disregard.

24 Q. Ms. Espinosa, were you ever contacted by the government in
25 this case, by the prosecutors?

LCGVMAX3

Espinosa - direct

1 A. Yes.

2 Q. And did you sit down for an interview with those
3 prosecutors in the case?

4 A. Yes.

5 Q. Do you recall when that was?

6 A. I think it was during the summer of this year.

7 Q. Do you remember the first time you sat down with them? Or
8 this may have been a videoconference?

9 A. It was a videoconference.

10 Q. Do you remember when that videoconference occurred?

11 A. No.

12 Q. I want to show you something that may refresh your
13 recollection. Do you see the folder that's below you on the
14 floor next to the chair?

15 MR. EVERDELL: With the Court's permission, I'll have
16 her turn to 3501.063-002, which should be behind tab 2 of your
17 materials.

18 THE COURT: Ms. Pomerantz, are you there?

19 MS. POMERANTZ: Yes, your Honor.

20 THE COURT: Okay. Go ahead.

21 Q. Do you have that document in front of you?

22 A. Yes.

23 Q. And if you could just look down at the bottom of the page
24 where there is some information on the left-hand side. Does
25 that refresh your recollection of when you had the

LCGVMAX3

Espinosa - direct

1 videoconference with the government?

2 A. Last year, I think. So repeat your question please.

3 Q. Does that refresh your recollection of when you had this
4 videoconference for the first time with the government?

5 A. Yes, well, there's a date on here.

6 Q. And does that generally refresh your recollection about
7 when this would have happened?

8 A. Yes.

9 Q. Okay. And when did that happen?

10 A. November 2020.

11 Q. Okay. All right.

12 Was that the only time you spoke to the government in
13 this case?

14 A. Yes.

15 Q. Okay. Question about Ghislaine. In the time that you
16 worked for Ghislaine Maxwell from 1996 to 2002, did you ever
17 see Ms. Maxwell pregnant?

18 A. No.

19 Q. Ever were told that Ms. Maxwell was pregnant?

20 A. No.

21 MS. POMERANTZ: Objection, your Honor.

22 THE COURT: Overruled.

23 Q. Ms. Espinosa, you said you left the job in roughly 2002; is
24 that right?

25 A. Correct.

LCGVMAX3

Espinosa - direct

1 Q. Why did you decide to leave at that time?

2 A. After 9/11, I had decided that it was time for me to move
3 back to my roots; wanted to be with my family. My brother had
4 his first child, and I just wanted to go back to where I came
5 from.

6 Q. And where was that?

7 A. California.

8 Q. Okay. When you left, did you continue to stay in touch
9 with Ghislaine after you left?

10 A. Yes.

11 Q. Looking back on your experience working with Ghislaine,
12 what are your impressions about the job and about Ghislaine?

13 A. I feel like Ghislaine was a very good resource for my own
14 career as far as experience and what I learned from her as far
15 as how to handle multiple projects at one time at a fast pace.
16 I think it helped me to get to where I am today in my job.

17 Q. And what, if any, are your personal feelings and
18 reflections about your job?

19 MS. POMERANTZ: Objection, your Honor.

20 THE COURT: Sustained.

21 Q. Besides your career path, are there any other reflections
22 you have on your experience with Ms. Maxwell?

23 MS. POMERANTZ: Objection.

24 THE COURT: Sustained.

25 Q. In the time -- Ms. Espinosa, you are aware of the crimes

LCGVMAX3

Espinosa - cross

1 that Ghislaine is accused of committing in this case?

2 A. Yes.

3 Q. In the time that you worked for Ghislaine, did you ever see
4 her engage in any kind of inappropriate activity with underage
5 girls?

6 A. Never.

7 Q. Did you ever see Jeffrey Epstein engage in inappropriate
8 activity with underage girls?

9 A. Never.

10 Q. Did you ever see anything at all in the six years that you
11 worked for Ghislaine that gave you the impression that anything
12 like that was going on?

13 A. Never. No.

14 MR. EVERDELL: One moment, your Honor.

15 THE COURT: Okay.

16 (Counsel conferred)

17 MR. EVERDELL: I have no further questions, your
18 Honor.

19 THE COURT: All right. Ms. Pomerantz.

20 MS. POMERANTZ: Yes. Briefly, your Honor.

21 THE COURT: Go ahead.

22 CROSS-EXAMINATION

23 BY MS. POMERANTZ:

24 Q. Good afternoon, Ms. Espinosa.

25 A. Hi.

LCGVMAX3

Espinosa - cross

1 Q. You worked out of Jeffrey Epstein's Madison Avenue office
2 in Manhattan, right?

3 A. Correct.

4 Q. You did not work out of any of Jeffrey Epstein's homes,
5 right?

6 A. Correct.

7 Q. You never went to Jeffrey Epstein's Palm Beach house,
8 right?

9 A. Correct.

10 MS. POMERANTZ: No further questions, your Honor.

11 THE COURT: Okay. Anything?

12 MR. EVERDELL: No redirect, your Honor.

13 THE COURT: All right. Thank you, Ms. Espinosa. You
14 may step down. You are excused. Thank you.

15 (Witness excused)

16 THE COURT: Mr. Everdell, the defense may call its
17 next witness.

18 MR. EVERDELL: Yes, your Honor.

19 The defense calls Mr. Raghu Sud. That's R-A-G-H-U,
20 S-U-D.

21 THE COURT: Okay. Mr. Sud may come forward.

22 RAGHU SUD,

23 called as a witness by the Defendant,

24 having been duly sworn, testified as follows:

25 THE COURT: Thank you. Mr. Everdell, you may inquire.

LCGVMAX3

Sud - direct

1 MR. EVERDELL: Thank you, your Honor.

2 DIRECT EXAMINATION

3 BY MR. EVERDELL:

4 Q. Good morning, Mr. Sud.

5 Just be sure to speak into the microphone so we can
6 hear your responses.

7 A. Good morning.

8 Q. Thank you.

9 Where do you live, Mr. Sud?

10 A. East Windsor, New Jersey.

11 Q. How long have you lived there?

12 A. Since 2002.

13 Q. Where do you work?

14 A. Shoppers Travel.

15 Q. What is Shoppers Travel?

16 A. It's a full-service travel agency providing airline
17 tickets, car rentals, hotels, and vacations to customers.

18 Q. How long has Shoppers Travel been a company?

19 A. Since 1988.

20 Q. And when did you start working for Shoppers Travel?

21 A. Since 1988.

22 Q. You were there when it started?

23 A. Yeah.

24 Q. What is your current position at Shoppers Travel?

25 A. Vice president.

LCGVMAX3

Sud - direct

1 Q. What are your duties and responsibilities in that position?

2 A. Overseeing day-to-day operation and interacting with
3 customers, making travel bookings for them. Whatever is
4 required to do.

5 Q. Are you familiar with how Shoppers Travel bills or invoices
6 its customers?

7 A. Yes.

8 Q. And how does that work?

9 A. When a customer calls, they ask for what they need. We
10 make up an itinerary or issue tickets according to their needs
11 and then charge their credit cards for that; or if they are
12 sending check, then take a check from them.

13 Q. And do you generate invoices as part of that process?

14 A. Yes, we do.

15 Q. And what do you do with the invoices?

16 A. Invoices are sent to the customers. And we keep them and
17 put them -- enter in our accounting system, which is called
18 QuickBooks.

19 Q. Is it QuickBooks?

20 A. Yeah.

21 Q. Okay. And are you familiar with how Shoppers Travel uses
22 QuickBooks to keep its billing records?

23 A. Yes, I am.

24 Q. Okay. And is that kept electronically?

25 A. Yes.

LCGVMAX3

Sud - direct

1 Q. And do the QuickBooks records include information about the
2 invoices that were sent to the customers?

3 A. Yes.

4 Q. How is the information from the invoices or any other
5 billing records input into the QuickBooks system?

6 A. According to each customer. It's different if it's repeat
7 customer. We make up a profile for them and enter everything
8 under that name, even though they are different passengers, but
9 it's coming from one place. A request is made, then it's
10 entered accordingly, or it's individually entered with the
11 invoice numbers and the date.

12 Q. Okay. And when is that information entered into the
13 QuickBooks system?

14 A. Either same day or next day.

15 Q. Same day or next day as what?

16 A. Of the transaction.

17 Q. Okay. And are you able to search your QuickBooks database
18 for invoices and other billing records related to customers?

19 A. Yes, we can.

20 Q. Okay. And how would you do that?

21 A. It all depends if we are doing it for a company which we
22 have made a profile, or a group we have made a profile for.
23 Then we put the profile name and run a report on it.

24 Q. Okay. Great.

25 And does the QuickBooks system generate a report for

LCGVMAX3

Sud - direct

1 that profile customer?

2 A. Yes, they do.

3 Q. Okay. Do you ever have a profile for someone named Jeffrey
4 Epstein?

5 A. Yes, we do.

6 Q. Okay. Was he a customer of Shoppers Travel?

7 A. His office was a customer, yes.

8 Q. Okay. And did you have interactions with his office about
9 booking flights and other travel arrangements?

10 A. Yes, we did.

11 Q. Did there come a time when you were asked to verify certain
12 records related to Epstein's office that you had at Shoppers
13 Travel?

14 A. To verify, not as of yet.

15 Q. Okay. Did there come a time when you were asked to
16 generate a report from your QuickBooks system?

17 A. Yes.

18 Q. And when were you asked to do that?

19 A. In 2016.

20 Q. Okay. And did there come a time when you were asked to
21 review that same report later on?

22 A. As of now, no.

23 Q. How about this: I want to show you what's been marked for
24 identification as RS-1. And we'll put that on the screen for
25 the Court and the deputy and the witness for now.

LCGVMAX3

Sud - direct

1 A. Yes, these are --

2 Q. Before you say anything, let's make sure --

3 MR. EVERDELL: Your Honor, may I inquire?

4 THE COURT: You may inquire.

5 Q. Sorry to interrupt you, Mr. Sud.

6 Do you see what's marked in front of you as Defense
7 Exhibit RS-1?

8 A. Yes. It was a report run through us on -- like I said, in
9 2016.

10 Q. Okay. So do you recognize that report?

11 A. Yes.

12 Q. And what is that report?

13 A. It shows the invoice. It says the date of the invoice
14 issued, invoice number, name of the passenger, and the amount.

15 Q. And what customer is this report related to?

16 A. This was for file name Epstein.

17 Q. And how do you recognize this document?

18 A. Because I was the one who ran it at that time.

19 Q. And what years does this report cover?

20 A. Well, if you have all of it, this page which I'm looking at
21 it, has 2005, 2006.

22 Q. Maybe if we could look now at the last page of the
23 document, which I believe is page 19.

24 Do you see page 19, Mr. Sud?

25 A. I do see. This is from '99.

LCGVMAX3

Sud - direct

1 Q. Okay. So roughly the records between January 1999 and
2 December 2006?

3 A. Yes, sir.

4 Q. Okay. And are these -- is this a fair and accurate copy of
5 the report of invoice information that's related to Epstein
6 from -- during those dates that I mentioned?

7 A. Yes, sir.

8 Q. Now, was this report generated -- does this report contain
9 information that was added to the database at or near the time
10 that the invoices that are listed there?

11 A. I'm sorry, I didn't get the question.

12 Q. Does the report -- does the information in the report about
13 the invoices, was it added to the database at or near the time
14 that the invoices reflect?

15 A. Like I said, it's always entered on the same day or the
16 next day.

17 Q. Okay. And was the invoice information in this report added
18 to the database with someone who had knowledge of the
19 information on the invoices?

20 A. Yes, sir.

21 Q. And was -- is it the regular practice of Shoppers Travel to
22 keep this information in its database?

23 A. Yes, sir.

24 Q. And does this report summarize the invoice information
25 that's kept in the regular course of business at Shoppers

LCGVMAX3

Sud - direct

1 Travel?

2 A. Yes, sir.

3 MR. EVERDELL: Your Honor, at this time the defense
4 offers what's been marked as RS-1 for identification.

5 MS. MOE: Your Honor, no objection, provided it's
6 received under seal.

7 MR. EVERDELL: Yes, I should say that there are
8 personally identifying information of third parties, so we ask
9 for it to be received temporarily under seal so we can apply
10 appropriate redactions.

11 THE COURT: All right. RS-1 is admitted temporarily
12 under seal. And you can propose narrowed redactions as
13 necessary.

14 (Defendant's Exhibit RS-1 received in evidence)

15 MR. EVERDELL: Thank you, your Honor.

16 With the Court's permission, I will hand out copies to
17 the jury.

18 THE COURT: Okay.

19 MR. EVERDELL: Thank you.

20 With the Court's permission, I'll publish this to the
21 jury.

22 THE COURT: Ms. Moe?

23 MS. MOE: No objection, your Honor.

24 THE COURT: Okay. The jury may open the folder and
25 take a look. It's RS-1, which has been admitted.

LCGVMAX3

Sud - direct

1 Q. All right.

2 Mr. Sud, do you still have RS-1 in front of you?

3 A. Yes.

4 Q. I'll just ask you a few questions about this document.

5 This is what comes from your QuickBooks system;
6 correct?

7 A. Yes, sir.

8 Q. And you said this is for -- related to the customer Jeffrey
9 Epstein?

10 A. Yes, sir.

11 Q. If we just look at the first page, you see the column that
12 says "type"?

13 A. Yeah.

14 Q. What does that refer to?

15 A. It's an invoice.

16 Q. Okay. And the date refers to what?

17 A. The date, when it was issued.

18 Q. When the invoice was issued?

19 A. Yeah.

20 THE COURT: Mr. Sud, could I ask you to pull the
21 microphone a little closer to you. Thank you so much.

22 THE WITNESS: Okay. Sorry about that.

23 THE COURT: That's okay.

24 Q. So the date is the date the invoice was issued?

25 A. Yeah.

LCGVMAX3

Sud - direct

1 Q. And then number or num, what does that refer to?

2 A. The number of the invoice.

3 Q. And do you see where it says "name"?

4 A. That's the name of the passenger.

5 Q. Okay. I don't want you to say any of the names, but that
6 reflects the name of the passenger who the ticket was purchased
7 for?

8 A. Yes.

9 Q. Okay. "Amount," what does that refer to?

10 A. That was the amount of that particular invoice.

11 Q. Okay. And then balance, what does that refer to?

12 A. That's just a carry forward same number. If you keep
13 saying -- balance keeps adding up.

14 Q. Okay. And again, these are records for Epstein from
15 January 1999 on the last page to December of 2006 on the first
16 page, right?

17 A. Yes, sir.

18 MR. EVERDELL: One moment, your Honor.

19 THE COURT: You may.

20 (Counsel conferred)

21 MR. EVERDELL: I have no further questions, your
22 Honor.

23 THE COURT: Ms. Moe.

24 MS. MOE: Very briefly, your Honor.

25 THE COURT: Go ahead.

LCGVMAX3

Sud - cross

1 CROSS-EXAMINATION

2 BY MS. MOE:

3 Q. Good morning, Mr. Sud.

4 A. Good morning.

5 Q. Just to be clear, you began booking travel for
6 Mr. Epstein's office in 1999; is that right?

7 A. Yes, ma'am.

8 Q. Okay. So you didn't book any travel for Mr. Epstein's
9 office before 1999?

10 A. Ma'am, if we did, I do not have any records for that.

11 Q. Okay. So the records that we're looking at in RS-1, those
12 begin in 1999 and run through 2006; is that correct?

13 A. Yes, ma'am.

14 MS. MOE: Thank you very much.

15 Nothing further, your Honor.

16 MR. EVERDELL: No redirect, your Honor.

17 THE COURT: All right. Thank you.

18 Mr. Sud, you may step down. You are excused.

19 THE WITNESS: Thank you.

20 (Witness excused)

21 THE COURT: Mr. Everdell, the defense -- sorry,
22 jurors. Thank you. You may put your folders down.

23 Thank you so much.

24 And Mr. Everdell, the defense may call its next
25 witness.

LCGVMAX3

Loftus - direct

1 MR. EVERDELL: Turn it over to my colleague, your
2 Honor.

3 THE COURT: Ms. Sternheim.

4 MS. STERNHEIM: Thank you, Judge.

5 The defense calls Elizabeth Loftus.

6 THE COURT: Okay. Elizabeth Loftus may come forward.

7 MS. STERNHEIM: Judge, I have an exhibit. May I hand
8 it to the government and the Court and put it on the witness
9 stand?

10 THE COURT: Yes. Good morning.

11 ELIZABETH LOFTUS,

12 called as a witness by the Defendant,
13 having been duly sworn, testified as follows:

14 THE COURT: Thank you.

15 MS. STERNHEIM: Judge, if I may.

16 THE COURT: Yes. Please just set that aside until
17 directed. Thank you.

18 Ms. Sternheim, you may inquire.

19 MS. STERNHEIM: Thank you very much.

20 DIRECT EXAMINATION

21 BY MS. STERNHEIM:

22 Q. Good afternoon, Professor Loftus.

23 A. Good afternoon.

24 Q. Please tell the jury why you are here today.

25 A. I am here as a professor and a scientist who studies human

LCGVMAX3

Loftus - direct

1 memory to talk about the nature of memory, the workings of
2 memory, how people can develop memories for things that didn't
3 happen or remember things differently from the way they
4 actually were, to talk about the work that I and other
5 scientists have done on false memories.

6 Q. Thank you, Professor Loftus.

7 Please tell the jury what your present occupation is.

8 A. I'm currently a professor at the University of
9 California-Irvine, the Irvine campus. My title is
10 distinguished professor. And I have appointments in a
11 department called psychological science, that's a psychology
12 department; I have an appointment in criminology, law, and
13 society, that's kind of a criminology department; and I'm also
14 a faculty member in the law school.

15 Q. How long have you been at UC-Irvine?

16 A. I joined the faculty in 2002, so it's coming on 20 years.

17 Q. And prior to joining the faculty at Irvine, had you been on
18 the faculty of any other university?

19 A. Yes. Prior to UC-Irvine, I was a professor at the
20 University of Washington in Seattle for something like 29
21 years. Prior to that, I spent a few years on the faculty at
22 the graduate faculty at the New School for Social Research here
23 in the city. And prior to that I was in graduate school.

24 Q. Focusing on graduate school, please tell the members of the
25 jury what degrees you have academically.

LCGVMAX3

Loftus - direct

1 A. Well, starting with college, I went to UCLA as an
2 undergraduate. I majored in mathematics and psychology and
3 received my bachelor's degree in 1966.

4 After UCLA, I went to Stanford for graduate school and
5 received a master's degree in psychology, followed by a Ph.D.
6 in psychology in 1970.

7 Q. Dr. Loftus, are you familiar with the term "curriculum
8 vitae"?

9 A. Yes.

10 Q. And is the abbreviation for that a CV?

11 A. Yes.

12 Q. And please tell the members of the jury what a curriculum
13 vitae is.

14 A. Well, typically, it's a document that expresses your
15 educational background, career, publications, awards, honors,
16 your professional life.

17 Q. And Dr. Loftus, do you, in fact, have a CV?

18 A. I do, yes.

19 Q. And for what period of time does your CV cover?

20 A. Well, I think I have mentioned in there where I went to
21 college, so it goes back to the 1960s. And then just about
22 everything that's happened professionally since that time.

23 Q. Professor Loftus, I'm going to ask you questions about your
24 background, research, education, etc. Would you benefit from
25 being able to look at your CV?

LCGVMAX3

Loftus - direct

1 A. That would be helpful, yes.

2 MS. STERNHEIM: With the Court's permission, I would
3 ask that Dr. Loftus be permitted to look at her CV, which is
4 Defendant's Exhibit EL-1, a copy of which has been provided to
5 the government and the Court.

6 THE COURT: Marked for identification?

7 MS. STERNHEIM: Yes.

8 MS. POMERANTZ: No objection, your Honor.

9 THE COURT: She may.

10 MS. STERNHEIM: Thank you.

11 BY MS. STERNHEIM:

12 Q. In addition to the degrees that you've just discussed, have
13 you ever received any honorary degrees?

14 A. I have received a number of honorary doctorates from
15 universities other than the ones I officially attended.

16 Q. Of those universities, are they all in the United States or
17 elsewhere as well?

18 A. Some of them are in the United States, like John Jay
19 College of Criminal Justice, which is one of the honorary
20 doctorates. But I also have an honorary doctorate from a
21 British university, from -- actually, I think a couple of
22 British universities, from the University of Oslo, from Haifa
23 University in Israel. And I was supposed to be awarded an
24 honorary doctorate by an Australian university, Australian
25 National University, where I was supposed to go to the

LCGVMAX3

Loftus - direct

1 commencement and receive it, but because of COVID, that hasn't
2 yet happened.

3 Q. Let's talk for a moment about any honors that you may have
4 received in connection with your professional capacities.

5 Could you please summarize them for the jury or
6 highlight those that you think are most significant.

7 A. Well, I don't know. That's kind of hard. It's like
8 which --

9 Q. Well --

10 A. -- which baby is more important.

11 Q. Let me stop you for a second.

12 A. Okay.

13 Q. You are referring to your CV?

14 A. Yes.

15 Q. Approximately how many pages is your CV?

16 A. Well, the CV is 47 pages single-spaced.

17 Q. Single-spaced. So it's rather dense; correct?

18 A. Yes.

19 Q. Well, I'm just going to ask you to highlight some of the
20 awards that you are most proud of for the jury.

21 A. Okay. Well, that would be page 2 or 3. Probably the most
22 prestigious of those awards is election to the National Academy
23 of Sciences. I was elected to the United States National
24 Academy of Sciences approximately 2004. And that is one of the
25 most prestigious things that can happen to an American

LCGVMAX3

Loftus - direct

1 scientist in a field that doesn't have a Nobel Prize.

2 Q. What are some of the other honors that you are especially
3 proud of?

4 A. I've received the two highest honors from the Association
5 for Psychological Science, an organization of primarily
6 academic scientific psychologists. I've received some lifetime
7 awards even from the American Psychological Association, which
8 is an organization that has many clinical psychologists as
9 members. Those are some of them.

10 Q. Is it fair to say you've received numerous awards, in
11 excess of dozens of awards?

12 A. Yes.

13 Q. And honors as well, correct?

14 A. I sort of lump them together, yes, sometimes.

15 Q. Okay. With regard to your academic experience, do you
16 perform research?

17 A. Yes.

18 Q. And what kind of research do you perform?

19 A. Over the course of my career, I've done many hundreds of
20 experiments. And when I say "experiments," these are
21 experiments that are conducted in my laboratory with my
22 graduate students or post-docs or sometimes undergraduate
23 research assistants, or they might be experiments that are done
24 outside in the field. And primarily these are studies of the
25 human memory; what happens after people have had some

LCGVMAX3

Loftus - direct

1 experience, maybe recorded a little bit of information about
2 the experience into their memory, and are then exposed to some
3 new information that can potentially contaminate or distort
4 that memory.

5 Q. In addition to the support that you received from the
6 universities of which you have been on the faculty and
7 supporting your research, have you received any fellowships or
8 grants that support your research?

9 A. Over the years, yes. My laboratory scientific experiments
10 have been supported by the National Science Foundation or the
11 National Institute of Mental Health or sometimes other
12 organizations or foundations that have provided the funds to,
13 excuse me, support that research.

14 Q. In addition to research that you've conducted, have you had
15 occasion to consult with any government agencies?

16 A. I've consulted with many government agencies, yes.

17 Q. Could you please share with the jury some of those agencies
18 that you've consulted with?

19 A. Well, I've consulted with the Department of Justice, the
20 Secret Service, the Central Intelligence Agency, the Federal
21 Bureau of Investigation, the Internal Revenue Service at
22 different points in my career.

23 Q. With regard to the research that you conduct, are the
24 findings or your analysis of the experiments put into a report
25 generally?

LCGVMAX3

Loftus - direct

1 A. Generally, when we do an experiment or a set of
2 experiments, we will write up a scientific publication, submit
3 it hopefully to a peer-reviewed journal where it will undergo
4 peer review and then be published and be part of the scientific
5 literature so that it's available for other people to have
6 access to.

7 Q. Please, in a very simple fashion, describe to the jury what
8 the peer review process is.

9 A. Journals that are peer-reviewed journals generally have an
10 editorial board. Members of the scientific community that will
11 review a manuscript that has been submitted for publication,
12 will review that manuscript and will make recommendations to
13 the editor about whether this manuscript is worthy of being
14 published. Is it scientifically sound, is it sufficiently
15 interesting, is it appropriate for the journal, helping the
16 editor to make that -- or should it be rejected, because it's
17 none of those things.

18 Q. In addition to your submission of your own reports to
19 peer-reviewed journals, have you had the occasion to serve on
20 the editorial boards of any peer-reviewed journals?

21 A. Well, over these years I've served on the editorial board
22 of many journals. And even today I am still on the editorial
23 board of a few journals. But over the years, many of the major
24 journals in the field of psychology.

25 Q. In the course of your career, have you been a member of any

LCGVMAX3

Loftus - direct

1 professional organizations?

2 A. Yes.

3 Q. And give the jury just a sampling of what kind of
4 organizations those are.

5 A. Well, one of my primary organizations with which I
6 affiliate is the Association for Psychological Science. This
7 is an organization primarily of academic university research
8 psychologists, although there are many clinical researchers who
9 also belong to the organization. I was president of that
10 organization in 1998-ish.

11 I'm a member of the Western Psychological Association.
12 This is the organization in psychology that covers the western
13 region of the United States; so it's California, Oregon,
14 Washington, maybe Hawaii, and possibly some other states on the
15 west coast. And I was twice president of the Western
16 Psychological Association.

17 So those are just a couple of the organizations that I
18 affiliate with.

19 I've been president of a couple of the divisions of
20 the American Psychological Association in the past, like the
21 American Psychology Law Society, and have served in other roles
22 for other organizations, not president.

23 Q. Moving on to publications. During the course of your
24 career, have you published articles and journals?

25 A. Yes.

LCGVMAX3

Loftus - direct

1 Q. Can you approximate over the span of your career -- and let
2 me stop you for a minute. How many years would you say you
3 have been a psychologist in the field of memory science?

4 A. Well, at least since I got my Ph.D. in 1970. But I
5 actually published a few articles while I was still a graduate
6 student with my professors as coauthors.

7 Q. Well, let's begin at 1970. From 1970 to this year, 2021,
8 approximately how many articles, if you could estimate, have
9 you published?

10 A. Well, I've published over 20 books and probably over 600
11 scientific articles and chapters.

12 Q. And are all of them in your CV?

13 A. I believe just about everything I've published is listed in
14 the CV, and that's why it takes so many pages.

15 Q. In addition to the publications that you have discussed in
16 the books that you have written, have you also coauthored in
17 other people's books, such as chapters and textbooks and
18 otherwise?

19 A. Yes, I've coauthored a number of chapters, but that would
20 have been included in the 600 estimate that I've given you
21 already.

22 Q. Okay. Now, I'd like to speak to you briefly about the
23 research that you've conducted.

24 Is it possible for you to approximate how many
25 research experiments you've conducted at least from 1970 to the

LCGVMAX3

Loftus - direct

1 present?

2 A. I would just estimate hundreds of experiments involving
3 maybe 50,000 participants or more, but it's just a -- it's just
4 kind of an estimate.

5 Q. Well, let's just focus on a few of those, if we might.

6 What stands out in your mind with regard to
7 experiments that you have done that have impacted the science
8 of memory?

9 A. I would say that one of the major contributions is the work
10 that I and my collaborators have done on the misinformation
11 effect on showing that after people see, say, a simulated crime
12 or a simulated accident, and they are exposed to some
13 misinformation about the accident or the crime that they saw,
14 that many people will incorporate that misinformation into
15 their memory and it causes an impairment in memory. False
16 swayed of the misinformation. It becomes their memory and
17 their memory becomes inaccurate.

18 One -- I guess you could call it a classic study,
19 because it's in many of the textbooks in psychology today is
20 one in which we show people a simulated accident, maybe a car
21 goes through a stop sign that's controlling the intersection.
22 And later on we expose our witnesses to misinformation that it
23 was a yield sign. Many people will now claim that they saw a
24 yield sign instead of a stop sign. So they have succumbed to
25 the misinformation in that new information that was presented

LCGVMAX3

Loftus - direct

1 to them and adopted it as their own memory. And that study was
2 published in 1978.

3 Q. Have you conducted any studies that have to do with
4 language and how language might affect memory?

5 A. Yes. An example of that would be -- again, this is also a
6 fairly widely cited study.

7 We showed people a simulated accident. Afterwards, we
8 asked people about the speed of the vehicles involved in the
9 accident. But different witnesses are questioned in different
10 ways. So some witnesses are asked a question like, How fast
11 were the cars going when they smashed into each other? And
12 others are asked, How fast were the cars going when they hit
13 each other?

14 And we found that people estimated the speed as
15 greater if you used the word "smashed" than if you used the
16 word "hit." Also we had found that if we use the smash word,
17 this leading kind of biased word, it affected what other things
18 that people remembered. Our witnesses were more likely to
19 remember, for example, broken glass that didn't exist if we had
20 used that word smashed in questioning them.

21 So that's an example of what you're asking about, the
22 connection between language and memory.

23 Q. In the course of your research and experience, are you
24 aware of any experiments that have actually measured emotion
25 and its impact on memory?

LCGVMAX3

Loftus - direct

1 A. Yes, there is -- well, one study that's coming to mind
2 is -- this is a study that we published somewhat later in the
3 2000s, maybe around 2008 or so, along with my former Ph.D.
4 student who is now professor of psychology, Dr. Laney. This
5 was a study where we -- we didn't just change memory for
6 turning a stop sign into a yield sign, but we planted entire
7 events into the minds of research witnesses, events that did
8 not happen. And then we measured people's emotional reactions
9 to these false memories.

10 So we planted false memories, for example, that you
11 witnessed your parents having a physically violent fight when
12 you were a kid or that you accidentally caught your parents,
13 you know, having sex when you were a kid. And once we
14 succeeded in planting these false memories and measured
15 people's emotional reactions, they were just as emotional about
16 these created memories as other individuals were who truly had
17 had those experiences. So the bottom line there was that
18 emotion is no guarantee that you're dealing with an authentic
19 memory.

20 Q. Professor Loftus, in devising a research project, do you
21 need to gain approval from any organization or from your
22 university to permit you to engage in that experiment?

23 A. Yes, we do. Colleges and universities have human subjects,
24 review committees. And when we want to propose to do a study
25 with humans, there are separate groups that review studies with

LCGVMAX3

Loftus - direct

1 animals, but I am proposing studies with humans. It goes
2 through a process of review on the campus. And sometimes they
3 ask you to make modifications in your procedure; other times
4 they just outright give you the blessing to go ahead and do the
5 study.

6 Q. Is there a standard requirement that the experiment that
7 you're engaging in cause no harm to the participant?

8 A. Well, we certainly -- we certainly hope for -- yes, that
9 the -- when we're experimenting with human beings, that we are
10 not going to create any -- any harm in those participants.

11 Q. And does that requirement in and of itself limit the types
12 of experiments that you might otherwise choose to engage in?

13 A. Yes, it does. It does. So it might dictate what kind --
14 in the case of my work on false memories, what kind of false
15 memory I would propose to plant in the minds of a research
16 participant. So I might want to plant a false memory that
17 something horrible happened that would have been traumatic if
18 it actually had happened, like you were, you know, attacked by
19 a vicious animal. And the human subjects review committee,
20 well, has been known to approve that kind of proposal.

21 But other kinds of studies that might be a little bit
22 more sensitive, the human subjects committee might feel a
23 little uncomfortable about approving, like a deliberate attempt
24 to -- to plant a memory, for example, that your father, you
25 know, forced you to sacrifice animals or breed babies and kill

LCGVMAX3

Loftus - direct

1 those babies, something that you see in these claims of satanic
2 rituals, for example.

3 Q. Dr. Loftus, this is not your first time testifying, is it?

4 A. No, it's not.

5 Q. Approximately how many times have you testified in a court
6 of law over the time that you have been a research scientist?

7 A. I've testified in approximately 300 trials since June 3rd,
8 1975.

9 Q. And in addition to giving testimony at trial, have you also
10 provided testimony at depositions?

11 A. Yes.

12 Q. Have you testified in civil cases?

13 A. Yes.

14 Q. Have you testified for both the plaintiff and the defense?

15 A. Many times, yes.

16 Q. In connection with criminal cases, is it fair to say that
17 the majority, if not most, of your testimony is for the
18 defense; correct?

19 A. Well, I've only been asked to consult with the prosecution
20 maybe five or six times. But of those five or six times I've
21 consulted, only one time did the prosecution actually request
22 my testimony at trial; and I did testify for the prosecution in
23 that one case in Wisconsin.

24 Q. I apologize.

25 Do you have any knowledge of why you have not

LCGVMAX3

Loftus - direct

1 testified more often for the prosecution?

2 A. The prosecution is frequently the one that has -- is
3 putting on memory testimony and maybe wants to bolster that
4 testimony. And the testimony about memory distortion or the
5 potential for false memories is not something that typically
6 fits in their agenda.

7 Q. With regard to the many hundreds of times that you've
8 testified, have you been declared as an expert in the science
9 of memory?

10 A. The vast majority of those 300 cases are testimony about
11 memory. Every now and then I have testified as an expert
12 witness on a slightly different issue, usually having to do
13 with human comprehension, but not necessarily memory, like how
14 people would understand warning labels, for example.

15 Q. And is part of your expertise related to the impact of
16 memory on the brain?

17 A. I talk about memory and the processes of memory. It's the
18 neuroscientist who might be the ones who want to tell you about
19 the hippocampus and the amygdala and how it connects to the
20 parts of the brain. I know a little bit about that and I've
21 included material in some of my introductory psychology
22 textbooks about that; but I would defer to a different expert,
23 if you're talking about matters of neuroscience.

24 Q. Well, with regard to memory though, have you testified
25 about these stages of memory as known in your field?

LCGVMAX3

Loftus - direct

1 A. Oh, yes. Yes.

2 Q. Have you testified with regard to the impact of post-event
3 information on memory?

4 A. Many times, yes.

5 (Continued on next page)

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Loftus - direct

1 BY MS. STERNHEIM:

2 Q. And have you testified with regard to the construction or
3 reconstruction of memory?

4 A. Yes.

5 MS. STERNHEIM: Judge, at this time, I would proffer
6 Professor Elizabeth Loftus as an expert in the field of memory
7 science, the nature of memory reconstruction, and the impact of
8 events upon memory.

9 MS. POMERANTZ: Subject to our earlier objections,
10 your Honor.

11 THE COURT: Consistent with my prior ruling, I
12 indicate Professor Loftus as an expert in the fields you've
13 indicated. Go ahead.

14 MS. STERNHEIM: Thank you very much.

15 BY MS. STERNHEIM:

16 Q. Professor Loftus, I just mentioned stages of memory. Can
17 you please explain to the jury what those stages are in the
18 study of memory science.

19 A. Yes. One of the things we know about memory is it doesn't
20 work like a recording device. You don't just record the event
21 and play it back later. The process is much more complex. And
22 we study the processes of memory, tend to divide that process
23 into three major stages.

24 THE WITNESS: And, your Honor, I don't know if it's
25 possible in this enclosure for me to illustrate this for the

LCGCmax4

Loftus - direct

1 jury, but it might help if I could use the equipment to
2 identify the three stages and --

3 MS. STERNHEIM: Judge, the monitors have the capacity
4 to be used as a whiteboard and I would request that, for
5 demonstrative purposes, Professor Loftus be permitted to
6 demonstrate what she is discussing concerning the stages of
7 memory.

8 THE COURT: Ms. Pomerantz.

9 MS. POMERANTZ: No objection, your Honor.

10 THE COURT: All right. If you can do it
11 technologically, go ahead.

12 MS. STERNHEIM: May I just go over and show professor
13 Loftus what we need to do to turn it on. I think we have our
14 able tech person to help us. Thank you.

15 Your Honor, I would ask the screen be visible for the
16 jury, the parties, and the public.

17 THE COURT: You may.

18 BY MS. STERNHEIM:

19 Q. Professor Loftus, you may use the screen if it aids in your
20 testimony concerning the stages of memory.

21 A. So, typically, we start with the first stage, which is
22 called the acquisition stage. This is kind of -- and this is a
23 period where some event or events occur. That's the first
24 stage of the process.

25 But after that event or those events are over, now

LCGCmax4

Loftus - direct

1 time is passing and we enter the second stage, and this is
2 called the retention stage. After some time has passed, a
3 person might be asked to remember the event or the events, to
4 answer questions, to subject himself to an interview, to
5 testify. These are acts of retrieval where somebody is trying
6 to retrieve information about the event.

7 And so now we enter that third stage, which is the
8 retrieval stage. So our job as researches in this field is to
9 identify the psychological factors that come into play at each
10 of these three stages that can affect the accuracy of what
11 somebody is telling you.

12 Q. Let me stop you for a second. When you were referring to
13 the acquisition stage, you mentioned an event. In the category
14 of event, is it just something that one sees or can it be that
15 something that one actually personally experiences or hears?

16 A. Well, first of all, it could be just -- it could be what
17 somebody sees and hears. It can be a robbery, for example,
18 which somebody is seeing something and maybe hearing some
19 conversation, but it might just be memory from a conversation
20 or memory for some other experience that ends up being critical
21 where you would like to know what happened.

22 Q. So one could actually be an observer or an actual
23 participant or a hearer, someone who hears something in that
24 acquisition stage?

25 A. Yes. Sometimes people, for example, are crime victims and

LCGCmax4

Loftus - direct

1 sometimes they're witnesses, and they're not the victim
2 themselves, but --

3 Q. Now, after the acquisition stage, is anything that happens
4 after the event, whichever constitutes the event occurs,
5 considered retention stage?

6 A. Typically, yes. It's after the event is over, so we say,
7 well, that's the retention stage. I don't mean to complicate
8 things too much, but I think you can appreciate that actually
9 there can be many acts of retrieval. So there can be a long
10 retention interval peppered with different acts of retrieval.
11 But I used a simple diagram here to illustrate the three major
12 stages.

13 Q. Can you simply identify what separate acts of retrieval
14 would be.

15 A. So after some event, say, you know, a robbery, sometimes
16 people might have a conversation with each other about what
17 they saw and then sometimes the police might come to the scene
18 and start asking questions about what did you see or what did
19 you hear, and then the person might go to a police station and
20 maybe try to make an identification of somebody who might have
21 been seen at the event, and then somebody may be interviewed
22 many more times, may then testify at trial. That would be a
23 standard situation in a legally relevant event.

24 Q. Now, in each of those retrieval examples you just gave,
25 that is coming from an external source; correct?

LCGCmax4

Loftus - direct

1 A. Yes.

2 Q. Is there the possibility of retrieval from an internal
3 source, meaning within the individual who is trying to recreate
4 the memory?

5 A. Well, in the example that I gave earlier with the stop sign
6 and the yield sign, we do suggest the misinformation
7 externally, we supply them with the misinformation. But
8 sometimes what happens with individuals is they draw inferences
9 about what might have happened or what could have happened or
10 what possibly happened and they can suggest things to
11 themselves. That's called autosuggestion where there is not
12 somebody deliberately suggesting something to you, not
13 deliberately trying to tell you, you know, I saw the thief and
14 he was wearing a brown jacket instead of a green jacket, but
15 you, the witness, are drawing inferences that then start to
16 feel as if they're memories.

17 Q. Going back to the acquisition stage, what would affect the
18 quality of one's acquisition of an event?

19 A. At the time of acquisition, the event itself, well, some
20 obvious thing, how good is the lighting, how far away are you,
21 how distracted are you, are you preoccupied thinking about
22 something else. Sometimes, if you're under the influence of
23 certain drugs. Marijuana is one that has been studied a lot,
24 for example, and we've studied it in a recent paper. That
25 could affect the formation of the memory in the first place.

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Loftus - direct

1 Q. So in connection with the acquisition stage, there could be
2 external factors that can affect acquisition?

3 A. Yes.

4 Q. And there could also be personal or internal factors that
5 could affect one's acquisition of information?

6 A. Yes.

7 Q. Now, going to the retrieval stage --

8 A. Retention.

9 Q. Well, retention would be --

10 A. What would be next.

11 Q. What you hold from the experience; correct?

12 A. Well -- so, time is passing. I mean, the event is getting
13 older and older, and some other things are important in this
14 retention stage, and one of those things is whether or not a
15 person is exposed to post-event suggestion. If there is
16 post-event suggestion, maybe a little misinformation, it can
17 enter a witness's memory and cause a contamination, an
18 alteration, a distortion, or even a supplementation of memory,
19 and the longer that retention interval, the older -- the older
20 the event is, the more susceptible people are to having
21 post-event suggestion potentially contaminate their memory.

22 Q. It's fair to say that one does not need any degree
23 whatsoever to know that memory can fade over time; correct?

24 A. Correct -- I think, yeah, that's kind of a matter of common
25 sense. But what's less a matter of common sense is that, as

LCGCmax4

Loftus - direct

1 it's faded and weakened, it becomes more vulnerable to
2 contamination.

3 Q. Now, you spoke about post-event suggestion. Stepping back
4 for a moment and just using the term post-event information,
5 please tell the jury what that would be and what could
6 constitute such information.

7 A. Post-event information can happen when two people are
8 having a conversation with each other about the past and they
9 can influence each other. Post-event information can be
10 supplied when somebody is being interrogated, particularly, if
11 they're being interrogated with somebody who's got an agenda or
12 a hypothesis about what might have happened and communicates
13 that to the person they're interviewing, even inadvertently.

14 The media is a source of post-event suggestion that
15 we've actually studied where people are sometimes interviewed
16 on the media or media personalities will supply some suggestive
17 information that can contaminate memory.

18 Those are just examples of out there in the real
19 world, what are the opportunities for post-event suggestion to
20 become available to a person and potentially contaminate a
21 memory.

22 Q. Have you conducted any studies or given any workshops with
23 regards to interviewing techniques and the effect on memory?

24 A. Well, that is typically what -- when I would be consulting,
25 for example, with the FBI or the Secret Service or even the

LCGCmax4

Loftus - direct

1 CIA, I would be talking about interviewing techniques and other
2 sources of potential post-event information that can
3 contaminate memory. That's part of what those lectures and
4 consulting is about.

5 Q. And in connection with an interviewing process, would there
6 be a difference between asking what would be an open-ended
7 question where the person being questioned provides the
8 information as opposed to, as we all know, what a leading
9 question is where the information may be provided and the
10 recipient of the question just answers yes or no?

11 A. Well, it's certainly open-ended questions give you, in some
12 sense, more accurate information. It might not be fully
13 complete, so you might need to follow it up with some specific,
14 more specific information or the closed-ended questions, and
15 you would like to have them be as neutral as possible so that
16 you don't contaminate the witness. But to get a little bit
17 more complete a version of what you're looking for -- but when
18 you ask leading questions like how fast were the cars going
19 when they smashed into each other, that's probably not a good
20 way to follow up an open-ended question.

21 Q. Now, with regard to the process of questioning someone,
22 have you conducted any studies that show the impact of stress
23 in the interviewing environment?

24 A. I have -- no. Usually, when you talk about stress, it's
25 usually at the time of the event itself. It can be a very --

LCGCmax4

Loftus - direct

1 you've seen a horrible traffic accident or something
2 particularly stressful happens to you. In terms of the stress
3 at the time of retrieval when you're answering questions, I'm
4 not sure, you know, to what extent that has been manipulated.
5 I'd have to think about that a little to see if I can think of
6 a study that might help you out there, but --

7 Q. Well, in addition to questioning someone, are there other
8 situations in which there can be the exchange of information
9 that can be suggestive to an individual?

10 A. Yes.

11 Q. Can you please give us some examples of that.

12 A. Sometimes when people are trying to retrieve information,
13 there is pressure to provide more, more details, more details
14 about some particular subject. I've seen that not only in law
15 enforcement interviews, but more often even in certain kinds of
16 psychotherapy.

17 Q. Now, talking about psychotherapy for a moment, you told the
18 jury that you have a doctorate in psychology, but are you a
19 practicing therapist?

20 A. No. No.

21 Q. Do you consult with patients in a therapeutic environment?

22 A. I don't do therapy, but I sometimes study patients. I
23 don't do therapy, though.

24 Q. So you're not a psychologist who has a therapeutic
25 practice?

LCGCmax4

Loftus - direct

1 A. Correct.

2 Q. You just mentioned the suggestiveness at times of
3 psychotherapy. Could you please explain to the jury what you
4 mean with regard to that.

5 A. Well, there are certain -- of course therapy can be
6 wonderful for many people, but there are some practices in some
7 psychotherapy where the therapist tells the patient that the
8 current problems are due to some buried memories of childhood
9 trauma and that they need to be recovered or retrieved in order
10 to heal the patient. Some of these patients -- some of these
11 psychotherapists have engaged in practices that have led their
12 patients to have false memories.

13 Q. But that certainly is not in every therapeutic environment?

14 A. No, absolutely not.

15 Q. Now, with regard to suggestiveness, are you familiar with a
16 concept called labeling?

17 A. Yes.

18 Q. Could you please explain to the jury what that means with
19 regard to memory.

20 A. There is a lot of classic work on labeling, which is if
21 you -- if a person sees something ambiguous and, later on, it
22 gets labeled with a particular label, that the individuals will
23 start to remember this ambiguous stimulus as something a little
24 closer to that label.

25 In one of the old classic studies, people saw a --

LCGCmax4

Loftus - direct

1 something that could vaguely look like it might be eyeglasses
2 or whatever, very ambiguous. If it got labeled as eyeglasses,
3 people remembered it as more like eyeglasses. If it got
4 labeled as dumbbells, people later remembered it as looking
5 more like dumbbells. That's just an example of how you can
6 label something ambiguous and it will affect people's memory
7 for what they saw.

8 Q. So if two people, let's say, are having a conversation
9 concerning an event, and one of the individuals characterizes
10 it in some colorful fashion that the other one may not have
11 considered, would that be a situation where the memory might
12 become labeled?

13 A. Yes, absolutely. In one of our older studies, we found
14 that labeling something as an incident, which is really fairly
15 neutral, has a different affect than when you label the thing
16 that happened as a fight. People are more likely to construct
17 an image of a fight, probably because of that label.

18 Q. Are you familiar with the term memory traces?

19 A. Memory traces?

20 Q. Yes. Or memory fragments?

21 A. Well, I suppose that every now and then somebody might talk
22 about memory fragments. Just, you would have a bit or a piece
23 of information in your memory.

24 Q. And are you familiar with situations where someone might
25 take that bit of a memory and enhance it in some way?

LCGCmax4

Loftus - direct

1 MS. POMERANTZ: Objection, your Honor.

2 THE COURT: Grounds.

3 MS. POMERANTZ: Leading.

4 THE COURT: Sustained.

5 MS. STERNHEIM: Okay. I'll move on.

6 BY MS. STERNHEIM:

7 Q. Are you familiar with the term forgetting curve?

8 A. Yes.

9 Q. Could you please explain to the jury what that means.

10 A. Yes. I hope in talking about the forgetting curve I'm not
11 violating any judge's order, but I will --

12 THE COURT: Jury will disregard the witness's last
13 comment. The witness will just direct her answers to the
14 questions posed. Thank you.

15 THE WITNESS: Okay. Sorry, your Honor.

16 Q. So the forgetting --

17 A. So the forgetting curve. If I were to plot how good is
18 memory as a function of how much time has passed --

19 MS. POMERANTZ: Objection, your Honor.

20 THE COURT: Sustained.

21 MS. STERNHEIM: We'll move on.

22 Q. Going back again to the concept of post-event information,
23 you spoke before about post-event suggestion. What would that
24 be?

25 A. Well, post-event information is sort of an umbrella term.

LCGCmax4

Loftus - direct

1 Post-event -- somebody could supply post-event information that
2 is accurate and that might cause somebody to supplement their
3 memory with accurate information. Post-event suggestion
4 typically refers to a situation where you're supplying people
5 with new information that is not particularly accurate.

6 Q. Memory has been termed a constructive process; correct?

7 A. Yes.

8 Q. Could you explain what that means to the jury.

9 A. What we mean by that is, as I testified earlier, we don't
10 just record events and play it back later like a recording
11 device would work, like a video machine, but rather, we are
12 actually constructing our memories when we retrieve memories.
13 We often take bits and pieces of experience sometimes that
14 occurred at different times and places, bring it together, and
15 construct what feels like a recollection.

16 Q. With regard to the experiments that you have conducted, by
17 virtue of the experiment itself, you have proof of what would
18 form the basis of a memory; correct?

19 MS. POMERANTZ: Objection.

20 THE COURT: Just a moment. Grounds.

21 MS. POMERANTZ: Leading.

22 THE COURT: Sustained.

23 BY MS. STERNHEIM:

24 Q. When you do memory research, is there a process in your
25 experiment that sets up a basis for a memory?

LCGCmax4

Loftus - direct

1 A. In some of the experiments, yes. So, for example, in the
2 study that I've testified about already, we show people a
3 simulated accident, so we know exactly what the event was, we
4 know what they saw and that way we can see how the post-event
5 information changes what they remember.

6 Q. And in contrasting that, which you just said you could see,
7 that would be different than somebody who just reports a memory
8 with no visual proof or documentation of it; correct?

9 A. Yes, then you don't have a record of what actually
10 happened.

11 Q. And somebody who might report a memory may give very vivid
12 detail; correct?

13 A. Yes.

14 Q. And does the fact that someone reports a memory with vivid
15 detail mean that the memory is accurate?

16 A. No, because of false memories. Once they're constructed in
17 somebody's mind, either by external suggestion or by
18 autosuggestion, could be very vivid, detailed. People can be
19 confident about them, people can be emotional about them, even
20 though they're false.

21 Q. So if somebody believes that they had an experience and
22 describes that experience, there is no way of proving that that
23 actually occurred?

24 MS. POMERANTZ: Objection.

25 THE COURT: Sustained.

LCGCmax4

Loftus - direct

1 Q. Outside of the laboratory, is there any way of proving that
2 someone has an actual memory?

3 MS. POMERANTZ: Objection.

4 THE COURT: Sustained.

5 Q. Does an experience that may contain some trauma make a
6 memory more reliable than one that does not?

7 A. Traumatic experiences compared to maybe more neutral ones
8 might be associated with certainly remembering, you know, the
9 core of what happened. You know that what you saw was a plane
10 crash and not a warehouse fire and maybe some core details, but
11 even traumatic experiences can be subjected to post-event
12 suggestion that can exaggerate or distort or change the memory.

13 Q. In the course of your research and experience, have you
14 done any experiments that have studied the confidence of
15 memory?

16 A. Yes.

17 Q. Can you please explain that to the jury.

18 A. Oftentimes, at retrieval, when somebody is answering a
19 question or reporting on what they remember from an event, they
20 might be asked to express the level of confidence, you know,
21 I'm pretty sure it happened, I'm very sure or what have you.
22 And one of the things we know is if the conditions are very
23 pristine, not a lot of -- not a lot of suggestion, not a long
24 period of time, they're a fair test, people are more accurate
25 when they're confident than when they're not confident. But

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Loftus - direct

1 the problem is when you have post-event suggestion or
2 intervention, people get very confident about their wrong
3 answers, and you can see that even wrong answers or false
4 information, false memories can be expressed with a high degree
5 of confidence.

6 Q. In connection with your experience and research, have you
7 ever come across the term, rich false memories?

8 A. Yes.

9 Q. Could you please explain to the jury what that means.

10 A. So going back, actually, to the typical eyewitness study,
11 witnesses see an accident, they really saw the car go through a
12 stop sign. Later on, you suggest it was a yield sign and many
13 people will succumb to the suggestion. You have changed a
14 detail in memory for an event that actually happened.

15 But somewhere around the 1990s, researchers from
16 around the world started to look at, could you plant an entire
17 event into the minds of people for something that didn't
18 happen, could you use enough suggestion that you would get
19 people to construct whole events, and we and others have
20 accomplished that, meaning other scientific laboratories,
21 planting false memories that -- well, as I mentioned, you
22 witnessed your parents have a physically violent fight or you
23 were attacked by a vicious animal, or you had a serious indoor
24 or outdoor accident, or you nearly drowned and had to be
25 rescued by a lifeguard, or you committed a crime as a teenager

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Loftus - direct

1 and it was serious enough that the police came to investigate -
2 all of these rich false memories have been planted in the minds
3 of otherwise healthy individuals.

4 THE COURT: Ms. Sternheim, we're going to break for
5 the lunch hour.

6 MS. STERNHEIM: That's great. Thank you.

7 THE COURT: Members of the jury, you'll have about an
8 hour for lunch. Thank you so much. Enjoy your lunch.

9 (Continued on next page)

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Loftus - direct

1 (Jury not present)

2 THE COURT: The witness may step down and out for the
3 break. Thank you.

4 Everyone may be seated. Are there matters to take up
5 before the break or just after the break?

6 MS. POMERANTZ: Not from the government.

7 MS. STERNHEIM: Not at this time, Judge.

8 THE COURT: Okay. You could step out, thank you.

9 THE WITNESS: Okay.

10 (Witness excused)

11 THE COURT: I just want to make sure we have clarity
12 on what needs to be resolved following the break.

13 On the prior inconsistent statements, I'm going to
14 spend my lunch looking through them, but I'm hoping there will
15 be consultation and stipulation in narrowing so that we can
16 really get down to where there is genuine disagreement after
17 you've had some discussion.

18 Is that everybody's understanding?

19 MR. ROHRBACH: That's fine with the government, your
20 Honor.

21 MR. EVERDELL: We will try to confer, see if we can
22 narrow the issues.

23 THE COURT: Okay. I don't know when you need
24 resolution of the un-narrowed issue, but my understanding is we
25 might hit that point today.

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Loftus - direct

1 MR. EVERDELL: Your Honor, yes. This does create a
2 bit of a timing problem because it's possible we would get to
3 the witnesses where these issues would come up, so --

4 THE COURT: All the more reason to work it out.

5 MR. EVERDELL: Very true. And if -- well, I guess
6 we'll address if we can't work it out with the Court when we
7 come back.

8 THE COURT: Okay. Were you going to offer something
9 there, Ms. Pomerantz?

10 MS. POMERANTZ: No, your Honor. I saw something pop
11 up on the screen.

12 THE COURT: All right. We'll come back. We're going
13 to need to come back early I think to get to some resolution if
14 we need to.

15 And Mr. Hamilton, you're going to confer on that so
16 that we can have that testimony ready when it's time?

17 MR. ROHRBACH: We'll confer on the details about how
18 to make that testimony happen. My understanding is the Court
19 hasn't resolved the pending motion to preclude the testimony in
20 full.

21 THE COURT: Right. I wanted to know what timing we
22 were talking about for that so that I can look at the papers.

23 MR. ROHRBACH: We'll confer with defense counsel about
24 that.

25 THE COURT: My quick skim of the papers this morning

LCGCmax4

Loftus - direct

1 was that there had been some narrowing there, as well; right?

2 MR. ROHRBACH: That's the government's understanding
3 of the defense response, yes, is that it's narrowed to a few
4 paragraphs of the affidavit.

5 THE COURT: A few paragraphs of the affidavit. Okay.
6 So I will focus my attention on those few paragraphs of the
7 affidavit and try to come back with resolution after lunch if I
8 can. If not, end of the day -- is it fair to assume we're not
9 going to get to that today?

10 MS. STERNHEIM: That is correct, Judge. If we were to
11 get there, we would have to do all the logistics about the
12 Webex and I also would need to see if Mr. Hamilton is up to it,
13 physically.

14 THE COURT: Well, you should make that call --

15 MS. STERNHEIM: I am doing that --

16 THE COURT: Because it will either be today or
17 tomorrow; right?

18 MS. STERNHEIM: Yes.

19 THE COURT: Okay. And then what else do I need to
20 consider? Anything else?

21 MS. POMERANTZ: Not from the government.

22 THE COURT: About how much longer on Professor Loftus?

23 MS. STERNHEIM: With the lunch break, much shorter. I
24 don't expect to be very long and I would like to trim it so
25 that we can move on.

LCGCmax4

Loftus - direct

1 THE COURT: And then who's next?

2 MS. STERNHEIM: I think we need to have a conferral
3 about that.

4 MR. EVERDELL: It will either be Richard Barnett or
5 Michael Aznaran from Customs and Border Protection.

6 THE COURT: Okay. It's 1:03, we'll meet in 45
7 minutes, so that's 1:50. See you then.

8 (Recess)

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Loftus - direct

1 AFTERNOON SESSION

2 2:05 p.m.

3 THE COURT: Okay, where are we?

4 MS. MENNINGER: Your Honor, the government and I spoke
5 over the break. We appreciate how lengthy two of the witness's
6 prior inconsistent statement contentions are. We were unable,
7 in this amount of time, to try to reach agreement on all of
8 them. The witnesses that pertain to those two would be
9 testifying tomorrow. The one that pertains to Carolyn is here
10 from out of state and would be testifying this afternoon. So
11 our joint proposal, I think, would be to address right now the
12 Carolyn prior inconsistent statement so that witness could
13 testify or be released this afternoon and then, at the close of
14 court this afternoon, for us to sit down with the testimony and
15 try to reach agreement on the two related to Jane and Annie.

16 MS. COMEY: That's correct, your Honor. I believe
17 there are only three statements at this point in dispute
18 regarding Carolyn, so I think we can resolve that pretty
19 quickly. Mr. Pagliuca, I believe, has the list of the three
20 that I believe are in dispute.

21 MR. PAGLIUCA: Yes, your Honor. The two that are
22 agreed to are at transcript 3610, 9 through 15 -- I'm sorry.
23 Not 36. I have 35 numbers in my head. 1610, lines 9 through
24 15; 1611, lines 1 through 5. Those correspond to the following
25 statements in the 302.

LCGCmax4

Loftus - direct

1 THE COURT: I have them. And have you agreed on how
2 they come in?

3 MS. COMEY: Your Honor, we've offered to stipulate to
4 what the 302 says. My understanding is that the defense
5 prefers a live witness, but we have offered to stipulate to
6 exactly what the witness would testify to if they wish.

7 MR. PAGLIUCA: The witness is here, your Honor. It
8 will be quicker just to put on the testimony than to draft up a
9 stipulation and read it into the record. So I think that's
10 what makes sense to me.

11 THE COURT: I mean, I can't force a stip. I can
12 strongly encourage when it makes sense. All right.

13 And then what's next?

14 MR. PAGLIUCA: The ones that are in contention, your
15 Honor, are transcript trial testimony 1564, lines 4 through 7,
16 and page 1565, 18 through 23.

17 THE COURT: Let me just get my eyes on it. Okay. Go
18 ahead.

19 MR. PAGLIUCA: That corresponds to 3505, 005, page 1,
20 second paragraph, the inconsistent statement is, "Virginia
21 approached Carolyn at a party and asked her if she would like
22 to make \$300."

23 THE COURT: So what's in dispute is whether it was at
24 a party or at the Virginia house?

25 MR. PAGLIUCA: Correct.

LCGCmax4

Loftus - direct

1 MS. COMEY: Your Honor, we believe that's collateral,
2 and extrinsic evidence isn't appropriate on a collateral
3 matter.

4 THE COURT: And also, the quote was read in court,
5 wasn't it?

6 MS. COMEY: Yes, your Honor.

7 THE COURT: I'll sustain the objection to that one.

8 MR. PAGLIUCA: The next is 1567, lines 7 through 19.

9 THE COURT: Okay. Just give me one moment.

10 MR. PAGLIUCA: Sure.

11 THE COURT: Okay.

12 MR. PAGLIUCA: And the prior inconsistent statement is
13 at 3505, 005, page 1, second paragraph. Virginia explained
14 Carolyn could make \$300 by providing a man in Palm Beach with a
15 massage.

16 MS. COMEY: Your Honor, our view is that the relevant
17 portion was read into the record and then, at lines 23 of 1567
18 through 2 of 1568, she was asked specifically whether she made
19 that statement to the FBI and she responded, yes, she told me
20 that. So I don't see how extrinsic evidence would be
21 appropriate.

22 MR. PAGLIUCA: I think it's inconsistent, your Honor.
23 There is a denial and then there is a yes, she told me that,
24 and I think with that inconsistency, we should be allowed to
25 impeach it.

LCGCmax4

Loftus - direct

1 THE COURT: Yes, she told me that, and that's what you
2 told the FBI, yes, I told you that. Sustained.

3 MR. PAGLIUCA: The next one that's on the chart, your
4 Honor, is not at issue.

5 THE COURT: Okay.

6 MR. PAGLIUCA: So I think that resolves it with the
7 Court's rulings. We're down to the two that have been agreed
8 to.

9 THE COURT: Okay. So that gets us what we need for
10 now and you'll keep working with respect to the other two
11 witnesses; correct?

12 MS. COMEY: Yes, your Honor.

13 THE COURT: Great. What else?

14 MR. PAGLIUCA: I don't know if the Court -- well, the
15 Court does not need to address this, but I conferred briefly
16 with the government about the government's proposed rebuttal
17 expert. I'm prepared to file something related to that, but
18 they may not be calling the rebuttal expert, so we'll deal with
19 that later.

20 THE COURT: Let's do what we need to do in the
21 immediate and then it sounds like we could do that by written
22 submission if we need to.

23 So the Hamilton issue, I'm trying to get my head
24 around. So let me just ask, make sure I understand. I'm
25 looking at the affidavit of Mr. Hamilton. This is you,

LCGCmax4

Loftus - direct

1 Mr. Everdell?

2 MR. EVERDELL: I have an update on his availability.
3 I think the substance is Ms. Sternheim.

4 THE COURT: Okay.

5 MR. EVERDELL: But as to his availability, we were
6 able to make contact with him and he can do a Webex today or
7 tomorrow, we just have to let him know when. I don't think
8 we'll be able to get the technology set up today, but he is
9 available tomorrow.

10 MS. STERNHEIM: Judge, I would just say that because
11 of his condition, I have not been able to speak with him and I
12 would like an opportunity to at least talk to him before we put
13 him on. So my preference would be to make him the first
14 witness tomorrow morning because of the time difference.

15 THE COURT: Okay. I think that's fine. Now let's
16 figure out if we're going to hear from him.

17 So I'm looking at the declaration. And you've
18 narrowed to paragraphs -- tell me, Ms. Sternheim. I think it's
19 17.

20 MS. STERNHEIM: Let me just confirm with my
21 colleagues.

22 Judge, I need to access the letter that was filed
23 earlier this morning.

24 THE COURT: I guess since perhaps we take this at the
25 end of the day. I don't want to have the jury --

LCGCmax4

Loftus - direct

1 MS. STERNHEIM: I'd appreciate that so that I can have
2 all of the documents in front of me.

3 THE COURT: Okay.

4 MS. STERNHEIM: Thank you very much.

5 THE COURT: Just so I can marinate on it. So the
6 basic idea is that you want this witness to testify about one
7 or two conversations that he had with this witness, who we're
8 calling Kate, the one or two conversations that he had with
9 Kate in which -- and his proffered testimony is that, at one
10 point, Kate said, regarding the subject of Jeffrey Epstein,
11 that it, quote, fell right into my lap.

12 MS. STERNHEIM: That's correct.

13 THE COURT: Let's start with that one. What is the
14 purpose for which it is being offered?

15 MS. STERNHEIM: It certainly shows motive and bias on
16 the part of Kate. There is a monetary issue here. That is not
17 the statement of someone who feels that they are a victim as
18 much as they feel -- it suggests that it's an opportunity that
19 is anything but placing her in the category of victim. It
20 sounds more like someone who is interested in a windfall.

21 THE COURT: So broadly stated, the purpose for which
22 it's being offered?

23 MS. STERNHEIM: Is her bias and motive.

24 THE COURT: And the government's objection?

25 MR. ROHRBACH: The government's objection is that this

LCGCmax4

Loftus - direct

1 is a collateral matter. It doesn't go to bias or impeachment.
2 That --

3 THE COURT: Is that a 401 objection?

4 MR. ROHRBACH: Well, it's not a form of impeachment of
5 Kate's testimony. So I guess it's 401 or it's not within the
6 common law motion to show bias or motive. It is not probative
7 on the question of any monetary incentive by Kate whatsoever.
8 There is no mention of money, no suggestion of her motive for
9 doing anything in that sentence. It's very difficult to parse,
10 without the witness's speculation, about what he thought Kate
11 might be referring to, which is it's certainly objectionable
12 and irrelevant testimony.

13 THE COURT: I wouldn't permit that. I guess the
14 question is just the recounting of what he said, she said, it
15 fell into my lap.

16 MR. ROHRBACH: Right.

17 THE COURT: So I think you mean that's -- I think it's
18 a 401 objection.

19 MR. ROHRBACH: It's a 401 objection, your Honor, and
20 we think it's extrinsic evidence on a collateral matter because
21 it's not impeachment about any of the core subjects. She was
22 asked about that on cross, she denied the statement. Her
23 denial can't be impeached with extrinsic evidence.

24 MS. STERNHEIM: Judge, it's my understanding that
25 motive and bias can be attacked in this manner. The witness

LCGCmax4

Loftus - direct

1 said no and we have a witness who says otherwise. To let it
2 just stand is only her statement, which we have the ability to
3 contest.

4 MR. ROHRBACH: That would only be true if it went to
5 bias and motive, which it doesn't for the reasons I've
6 explained. As the Court is aware, I think we had this
7 conversation at a sidebar during Kate's testimony when
8 Ms. Sternheim had this declaration and we all agreed this is a
9 collateral matter at that time.

10 MS. STERNHEIM: Judge, collateral during the testimony
11 of that witness. Having another witness to counter what that
12 witness says elevates it to another category.

13 MR. ROHRBACH: It's impeachment with extrinsic
14 evidence, whether that extrinsic evidence is a declaration or
15 live testimony by a witness.

16 THE COURT: It's not just the impeachment, it's not
17 just the question of did she say it or not. Although, there is
18 that impeachment embedded in it. But there is just the
19 testimony itself and the question is whether that's relevant
20 evidence of bias or motive; right? Isn't that the analysis?

21 MR. ROHRBACH: I didn't understand the defense to be
22 offering this as affirmative evidence of bias or motive, just
23 as impeachment for those reasons. The defense has never turned
24 this over in Rule 16 discovery, for example, which they would
25 do if it was part of their case in chief because they were

LCGCmax4

Loftus - direct

1 making an argument about witness bias, which is just, you know,
2 we're not raising a Rule 16 objection, it's just to show the
3 purpose for which this testimony is being used is extrinsic
4 evidence to impeach Kate's testimony.

5 MS. STERNHEIM: The papers that we filed last night
6 specifically state the basis upon which we are seeking to
7 introduce this. I made this available at the time of the
8 testimony. It is dated at a time that occurred during the
9 course of the trial related to the testimony of their witness.
10 I don't see why it is a Rule 16 violation --

11 THE COURT: Well, I think they're not actually arguing
12 that.

13 So, Mr. Rohrbach, for the proposition that the denial
14 can't be impeached by extrinsic evidence, cited Second Circuit
15 case, *United States v. Harvey*, 547 F.2d 720, "...that a cross
16 examiner is not required to, quote, take the answer, end quote,
17 of a witness concerning possible bias, but may proffer
18 extrinsic evidence, including the testimony of other witnesses
19 to prove the facts showing a bias in favor of or against a
20 party.

21 You agree that's the law, you're just saying that
22 there is not an available inference to the jury of bias from
23 the "it fell into my lap."

24 MR. ROHRBACH: That's right, your Honor. That
25 inference only becomes available when that statement is

LCGCmax4

Loftus - direct

1 surrounded by the speculative mental impressions of the
2 witness, which are not admissible evidence. And the statement
3 on its own says almost nothing is an out of context statement
4 from which, on its face, doesn't say anything about Kate's
5 motives or financial interests in anything.

6 MS. STERNHEIM: Judge, can the government really, with
7 a straight face, say that a victim would say, "It fell into my
8 lap." I think it goes to the weight that the jury wants to
9 give to it and I think that it is appropriate affirmative
10 testimony to be put on in a defense case. They can make
11 whatever arguments they want, they can cross examine
12 Mr. Hamilton, but to exclude it on that basis I think is just
13 wrong.

14 THE COURT: I mean, I think we've settled on the
15 analytical framework, which is we agree, following Harvey, if
16 it is extrinsic evidence, to show bias in favor of or against a
17 party, it's permissible; right?

18 MR. ROHRBACH: Yes, we agree.

19 THE COURT: So it's really a 401 question. Is there
20 an available inference to the jury, if they believe
21 Mr. Hamilton, that the witness said that Kate said, "It fell
22 into my lap," if that goes to bias. I think there is an
23 available inference to the jury. I won't let Mr. Hamilton go
24 beyond and speculate as to meaning.

25 MS. STERNHEIM: Understood.

LCGCmax4

Loftus - direct

1 THE COURT: So what else beyond that?

2 MS. STERNHEIM: There is the statement that Kate told
3 him that the case against Ms. Maxwell was getting stronger
4 because the women were strengthening their stories.

5 THE COURT: Okay. Mr. Rohrbach.

6 MR. ROHRBACH: So a few concerns about this one, your
7 Honor. This one sort of doesn't attempt to be a quotation from
8 Kate, so we don't know the sense in which it's going to be
9 viewed with mental impressions from. Mr. Hamilton is not a
10 statement that Kate was asked about on cross examination.

11 THE COURT: Pause on that point. Tell me the legal
12 basis for the pertinence of that.

13 MR. ROHRBACH: Well, to the extent that they are -- I
14 guess if they're offering it solely to show bias or motive,
15 then that wouldn't be necessary. If they're offering it as an
16 inconsistent statement with her other statements that she did
17 give on direct, that would not be available since they didn't
18 challenge her with a statement.

19 THE COURT: This is why I keep asking what's the
20 framework, because --

21 MR. ROHRBACH: If this is the bias framework again, it
22 wouldn't matter --

23 THE COURT: Is that the same contention?

24 MS. STERNHEIM: Yes, Judge.

25 THE COURT: So then we have the 401 question.

LCGCmax4

Loftus - direct

1 MR. ROHRBACH: It's the same 401 question, although
2 this one is even more attenuated from any notion of bias or
3 motive since it says nothing about her incentives or why she is
4 testifying. She could be testifying for literally or
5 cooperating with the government for literally any reason and
6 make the same statement. It sheds no light on her motives or
7 biases.

8 MS. STERNHEIM: It sheds light on her knowledge that
9 she knows what the other accusers are doing.

10 MR. ROHRBACH: That is not a motive or bias objection.

11 THE COURT: I think that's right. I'm inclined to
12 sustain on that one on the 401 ground. Okay.

13 So I think we're limited to the first question. So
14 you'll work out --

15 MR. ROHRBACH: We've been conferring and will work out
16 a way for Mr. Hamilton to testify on that point.

17 THE COURT: All right. We can bring in the jury?

18 MR. ROHRBACH: Nothing else from the government.

19 THE COURT: Ms. Sternheim.

20 MS. STERNHEIM: Ready to proceed.

21 THE COURT: We'll get the witness and Ms. Williams
22 will get the jury.

23 (Witness present)

24 You may take off your mask. Thank you.

25 (Jury present)

LCGCmax4

Loftus - direct

1 THE COURT: Thank you, everyone. I hope you had a
2 pleasant lunch. We're going to continue with the direct
3 examination of professor Loftus.

4 Professor Loftus, I remind you, you are under oath.

5 Ms. Sternheim you may inquire.

6 MS. STERNHEIM: Thank you.

7 BY MS. STERNHEIM:

8 Q. Professor Loftus, before we broke for lunch, I was asking
9 you, had you been involved in any research that dealt with the
10 correlation between the certainty of confidence that one has
11 and whether the memory itself is accurate. Do you recall that?

12 A. Yes, I believe I answered the question. Yes.

13 Q. And are you familiar with the concept that confidence is
14 malleable?

15 A. Yes.

16 Q. Can you please explain what that means to the jury.

17 A. People can express a level of confidence and if they then
18 get some new information, for example, confirming information,
19 something that confirms their recollection, it can increase --
20 sort of artificially increase their confidence in what they're
21 saying.

22 So, for example, in some research, primarily research
23 done by one of the most prominent people in this field,
24 Professor Wells from Iowa State, individuals would make an
25 identification at a lineup and then be told -- and express some

LCGCmax4

Loftus - direct

1 confidence like, I am pretty sure that's the guy. They get
2 some new information, that's our suspect, or some other
3 confirming information and it increases their confidence in
4 their recollection. And that's confidence malleability.

5 Q. Are you familiar with the concept of prestige enhancing
6 memory distortion?

7 A. Yes, I am.

8 Q. Could you please explain to the jury what that means.

9 A. So one of the things that memory scientists have discovered
10 about memory distortion is that we humans frequently remember
11 ourselves in a better light than perhaps is accurate. So there
12 are studies showing that people remember their grades were
13 better than they really were, that they voted in elections they
14 didn't vote in, that they gave more to cater than they really
15 gave, that their kids walked and talked at an earlier age than
16 they really did. These are prestige enhancing memory
17 distortions that people routinely make when they're not
18 deliberately lying, but maybe it makes them feel a little
19 better about themselves.

20 (Continued on next page)

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LCGVMAX5

Loftus - direct

1 BY MS. STERNHEIM:

2 Q. Earlier today I asked you various questions concerning the
3 context of your curriculum vitae, you remember that?

4 A. Yes.

5 Q. Fair to say that we didn't go into great detail about it;
6 correct?

7 A. Well, no, not great detail.

8 Q. And there was much more that you could have told the jury
9 about it, but it would be time-consuming, wouldn't it?

10 A. It would, yes.

11 MS. STERNHEIM: Judge, at this time I would move into
12 evidence Judge Loftus's CV, which is EF-1.

13 MS. POMERANTZ: Objection, your Honor.

14 THE COURT: I'm sorry?

15 MS. POMERANTZ: The government objects.

16 THE COURT: Overruled. EF-1 is admitted.

17 MS. STERNHEIM: Thank you.

18 (Defendant's Exhibit EF-1 received in evidence)

19 BY MS. STERNHEIM:

20 Q. Professor Loftus, just to be clear, you are being
21 compensated for your time; correct?

22 A. I am, or I hope so, yes.

23 Q. I hope so, too.

24 You don't have any stake in the outcome of this trial,
25 do you?

LCGVMAX5

Loftus - direct

1 A. No, I don't.

2 Q. The testimony that you give on memory science would be the
3 same regardless of what party called you; correct?

4 A. That's correct. It would depend on the facts of the case
5 and where it was appropriate; but whatever party wouldn't
6 matter.

7 Q. And what is the hourly rate that you're charging for your
8 time?

9 A. Well, I'm currently charging in this case \$600 an hour for
10 my time, which was the rate that I quoted when I was retained
11 back in January.

12 Q. Thank you. Just a few more questions.

13 You testified earlier this afternoon about media being
14 a post-event information source; correct?

15 A. Yes.

16 Q. Now, media isn't just limited to the printed page; correct?

17 A. No. It's television, social media, newspapers, podcasts.

18 Q. And dramatic portrayals would be a source of post-event
19 information, would it not?

20 A. Books and movies, yes.

21 Q. Okay. Thank you.

22 Now, we've talked earlier about suggestion. And
23 you've talked about studies in which memories have been
24 implanted in your subjects. The implanting of information
25 either in your laboratory or outside of your laboratory in the

LCGVMAX5

Loftus - direct

1 form of post-event information can be intentional or
2 inadvertent; correct?

3 A. Correct. Of course, in my studies or the studies of other
4 scientists, we do it deliberately in order to study what
5 happens, what changes it leads to. But out there in the real
6 world, it doesn't necessarily happen deliberately that people
7 are deliberately trying to mislead other people. It can happen
8 inadvertently.

9 Q. Have you conducted any research or are you aware of any
10 research that has indicated that secondary gain or motive may
11 impact the retelling of an event?

12 A. Well, there is some work on motivated false memories.
13 People do seem to be more willing to accept suggestions when
14 it's going to fit with their -- with their prior beliefs or fit
15 with some motives. I'm not sure I know any specific study that
16 sort of shows if people are offered money for a particular
17 memory, that they are more likely to give it to you, but it
18 certainly seems plausible.

19 Q. In any of the studies that you've conducted, has there been
20 an analysis of who provides the post-event information, meaning
21 someone who you trust as opposed to someone you don't trust?

22 A. Yes. There are several studies that are in the literature
23 on the source of the post-event information. And just in
24 brief, what people find is -- what researchers find is that
25 people are more likely to accept suggestive post-event

LCGVMAX5

Loftus - direct

1 information if it comes from somebody they trust or if it comes
2 from somebody who seems knowledgeable rather than somebody who
3 seems like they're trying to bias you for nefarious reasons.
4 So the source of the post-event information does matter.

5 There's even one study with children that shows that
6 young children are more likely to accept suggestions from
7 adults than from other children.

8 Q. And in looking at memory, is there any way for you to tell,
9 based upon your training, experience, and research, whether a
10 memory is real or the product of post-event information?

11 MS. POMERANTZ: Objection.

12 THE COURT: Sustained.

13 Q. Just going back for a moment, you spoke about post-event
14 information and post-event suggestion. What is post-event
15 contamination?

16 A. Post-event contamination would be a situation where there
17 was suggestive information that maybe led to a contamination.
18 You could have post-event suggestion and have people resist the
19 suggestion. But I think if I were going to use the term
20 "post-event contamination," it would mean that somebody was
21 exposed to the suggestive information and it actually
22 contaminated them.

23 MS. STERNHEIM: May I have a moment, Judge?

24 THE COURT: You may.

25 (Counsel conferred)

LCGVMAX5

Loftus - cross

1 MS. STERNHEIM: Thank you, Professor Loftus.

2 THE COURT: All right. Thank you, Ms. Sternheim.

3 Ms. Pomerantz.

4 MS. POMERANTZ: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MS. POMERANTZ:

7 Q. Good afternoon.

8 A. Good afternoon.

9 Q. I believe you testified that in addition to being a
10 researcher, you often serve as a consultant, right?

11 A. Yes.

12 Q. And that entails consulting with lawyers about cases,
13 right?

14 A. Yes.

15 Q. And sometimes it involves testifying at trials?

16 A. Correct.

17 Q. So let's first talk about consulting.

18 You consult with attorneys in criminal cases, right?

19 A. Yes.

20 Q. And you've consulted with attorneys hundreds and hundreds
21 of times, right?

22 A. Yes.

23 Q. You've consulted with defense attorneys in criminal cases
24 hundreds of times, right?

25 A. Probably, yes.

LCGVMAX5

Loftus - cross

1 Q. About 1,000 times?

2 A. Well, I don't know about 1,000, but hundreds of times.

3 Q. Okay. And of those hundreds of times, you've consulted
4 with the prosecution about five or six times, right?

5 A. That's approximately the number of times I've been called
6 by prosecutors to consult, yes.

7 Q. I want to talk about your trial testimony.

8 You testified earlier that you have testified in about
9 300 trials, right?

10 A. Approximately, yes.

11 Q. About half of those trials are criminal trials, right?

12 A. It's an estimate, but let's say roughly half, yes.

13 Q. Okay. So you've testified in about 150 criminal trials,
14 right?

15 A. Approximately, yes.

16 Q. And of the 150 times that you've testified at trial, you've
17 testified for the defense every single time but once, right?

18 A. Correct.

19 Q. And that one time that you didn't testify for the defense
20 was in the 1990s, right?

21 A. It was a case in Wisconsin is what I remember. I think it
22 might have been the '90s, yes.

23 Q. So it's fair to say that you've made a career out of being
24 a witness for the defense, right?

25 A. In criminal cases it's predominantly been testimony for the

LCGVMAX5

Loftus - cross

1 defense, yes.

2 Q. You wrote a book about some of your experiences testifying
3 at trial, right?

4 A. Yes, I did, 1991.

5 Q. You wrote a book called *Witness for the Defense*, right?

6 A. Correct.

7 Q. You haven't written a book called *Impartial Witness*, right?

8 MS. STERNHEIM: Objection.

9 THE COURT: Overruled.

10 A. I don't have a book by that title, no.

11 Q. I'm holding up what's been marked for identification,
12 Professor Loftus. Can you see that?

13 A. I had eye surgery about six weeks ago and I can sort of see
14 it.

15 THE COURT: You may approach.

16 MS. POMERANTZ: Thank you, your Honor.

17 THE COURT: After showing it to the defense.

18 MS. STERNHEIM: No need to see it.

19 THE COURT: When you return to the podium,
20 Ms. Pomerantz, you'll give an identification mark please.

21 MS. POMERANTZ: Yes, your Honor.

22 It's been marked for identification as Government
23 Exhibit 1500.

24 THE COURT: Okay.

25 Q. That is your book, *Witness for the Defense*, right?

LCGVMAX5

Loftus - cross

1 A. Yes.

2 Q. That's a photo of you on the cover, right?

3 A. Very old photo, yes.

4 Q. Okay. And in your book, *Witness for the Defense*, isn't it
5 true that you wrote: Should psychologists in a court of law
6 act as an advocate for the defense or an impartial educator?
7 My answer to that question, if I am completely honest, is both.

8 A. Could you refer me to the page number?

9 Q. Sure. It's on page 238, I believe it's Government Exhibit
10 1518.

11 MS. POMERANTZ: Your Honor, I have a binder with
12 materials that I'm happy to provide at this time if that would
13 be helpful.

14 THE COURT: Okay.

15 A. I've turned to page 238.

16 THE COURT: Do you have for the defense?

17 MS. POMERANTZ: Yes.

18 THE COURT: Okay.

19 Q. Dr. Loftus, I believe there is a binder now that you have.
20 The book works as well, but it is marked as Government Exhibit
21 1518. And the question I had asked was in your book *Witness*
22 *for the Defense*, isn't it true that you wrote: Should
23 psychologists in a court of law act as an advocate for the
24 defense or an impartial educator? My answer to that question,
25 if I'm completely honest, is both.

LCGVMAX5

Loftus - cross

1 It's just a yes or no, is that what you wrote?

2 A. That is a quote, but it leaves out the context of -- in
3 which that quote is quoted.

4 Q. Professor Loftus, when you testify at a trial, you don't
5 sit in the courtroom when you're not testifying, right?

6 A. I don't usually. Occasionally I do.

7 Q. You were not present for any of the testimony in this case,
8 right?

9 A. Well, I was not in the courtroom.

10 Q. Right. You were not present in the courtroom for any of
11 the testimony in this case, right?

12 A. I was not present in the courtroom; correct.

13 Q. Okay. I want to talk about your compensation.

14 You are being paid or you will be paid for your work
15 in this case, right?

16 A. I'm being compensated for my time, yes.

17 Q. And as you sit here, you're billing for your services,
18 right?

19 A. I'm sorry, could you repeat that?

20 Q. Sure. As you sit here, you're billing for your services,
21 right?

22 A. Yes.

23 Q. And you're charging the defendant \$600 an hour, right?

24 A. Correct.

25 Q. And you said earlier that you've testified at over 300

LCGVMAX5

Loftus - cross

1 trials, right?

2 A. In 50 years, yes.

3 Q. The first one was in about 1975, I believe you said?

4 A. June 3rd, yes.

5 Q. And you've also consulted on hundreds and hundreds of
6 cases, right?

7 A. I have, yes.

8 Q. And in most of those cases or many of those cases, you were
9 compensated for your work, right?

10 A. In many of them, yes.

11 Q. You've served as a paid expert for the defense many times,
12 right?

13 A. I have, yes.

14 Q. You served as a paid expert for some high-profile or famous
15 defendants, right?

16 A. I have.

17 Q. It's fair to say that over the years, criminal defendants
18 have paid you millions of dollars for your services, right?

19 A. I don't know if it's millions of dollars, no.

20 Q. When you started testifying as an expert witness back in
21 1975, you didn't charge \$600 an hour, right?

22 A. I started by charging nothing because I wanted to learn.

23 Q. Right. You charged much less than that, if anything at
24 all?

25 A. Correct.

LCGVMAX5

Loftus - cross

1 Q. Right. And over time, your hourly rate has increased,
2 right?

3 A. Correct.

4 Q. And in the years since 1975, you've testified in some
5 high-profile trials, right?

6 A. Correct.

7 Q. In some instances your testimony has drawn media attention,
8 right?

9 A. Sometimes, yes.

10 Q. There's been news articles about you and the testimony that
11 you've given, right?

12 A. Sometimes, yes.

13 Q. And that's helped raise your public profile, right?

14 MS. STERNHEIM: I would object, your Honor.

15 THE COURT: Just a moment.

16 The pending question is has this helped raise your
17 public profile.

18 Overruled. You may answer.

19 A. Overruled. Open my mouth and speak. Okay.

20 I wouldn't put it that way. I think my profile is --
21 I'm not sure what it means, my public profile. What do you
22 mean by that?

23 Q. Well, your testimony has helped you get hired by other
24 defense attorneys, right?

25 A. It's certainly possible that somebody has heard of my

LCGVMAX5

Loftus - cross

1 testimony in one case and thought that maybe they would hire me
2 in their case, yes. I would think that might be true.

3 Q. Your testimony -- you've used your testimony from
4 high-profile cases to market yourself, right?

5 MS. STERNHEIM: Objection.

6 THE COURT: One-word grounds.

7 MS. STERNHEIM: Relevance.

8 THE COURT: Overruled.

9 A. I don't market myself at all.

10 Q. Well, you've used your testimony from high-profile cases to
11 attempt to earn more money, isn't that right?

12 A. That's false.

13 Q. Okay. So you have provided defense attorneys with the
14 names of cases at which you've testified, right?

15 A. Well, I have provided the names of cases when -- to show
16 that the testimony has been admitted in those cases.

17 Q. But you've provided the list of the names of cases at which
18 you've testified for defense attorneys, right?

19 A. When asked to do that, I've done that, yes. Only when
20 asked.

21 Q. You've testified on behalf of many famous and high-profile
22 defendants, right?

23 A. A few, yes.

24 Q. People who can afford to pay your hourly rate, right?

25 A. And many who -- who -- in the past who couldn't.

LCGVMAX5

Loftus - cross

1 Q. You testified for Harvey Weinstein in his criminal trial,
2 right?

3 MS. STERNHEIM: Objection.

4 A. I testified --

5 THE COURT: Just a moment.

6 I'll hear from you.

7 (Continued on next page)

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LCGVMAX5

Loftus - cross

1 (At sidebar)

2 THE COURT: Is her testimony on her CV?

3 MS. STERNHEIM: Judge --

4 THE COURT: Is her testimony on her CV?

5 MS. STERNHEIM: No.

6 THE COURT: I just wanted to know that.

7 MS. STERNHEIM: I don't believe it has testimony.

8 It's a CV of her academic pursuits, her awards, her
9 publications.

10 THE COURT: Not the cases she's testified.

11 MS. STERNHEIM: No.

12 THE COURT: Okay. Go ahead.

13 MS. STERNHEIM: Your Honor, I certainly understand the
14 desire on the part of the government to do some character
15 assassination. But the fact of the matter, testifying in a
16 high-profile case is being used in a way that is very insidious
17 here. I don't understand what the purpose is. Are they
18 getting into her testimony in that case?

19 MS. POMERANTZ: Your Honor, I'm happy to respond.

20 So the witness has financial incentive to testify on
21 behalf of the defense. It's not a question of just getting
22 paid by the defendant in this case. Over her career she has
23 used her testimony as a defense -- as an expert for the defense
24 to testify at trials.

25 In her book she has a chapter, the book that she has

LCGVMAX5

Loftus - cross

1 right up there, there's a chapter in that book -- multiple
2 chapters dedicated to high-profile cases in which she's
3 testified.

4 THE COURT: Wait. So I allowed it because it goes to
5 motive, an ironic objection, but it goes -- if she has a motive
6 to testify in high-profile cases, that's monetary. I suppose
7 the inference is available as to her motive and credibility, so
8 that's why I allowed it.

9 Why are we going into specific cases in which she
10 testified?

11 MS. POMERANTZ: Your Honor, it's not an accident.
12 She's testifying here on the heels of her testimony at the
13 Harvey Weinstein trial. I would note that in multiple
14 instances, for instance, when Jane was testifying, the defense
15 insisted on a need to name a particular name of a pageant. It
16 wasn't enough to just say national pageant. Here we are, it's
17 the same issue that's coming up, your Honor, is that the
18 relevance of this detail. It is relevant, your Honor, that
19 this is after she did that. She testified in the Harvey
20 Weinstein trial. There is a *New Yorker Magazine* article that's
21 published on her in which she participates in the interview and
22 she --

23 THE COURT: You're just trying to associate her with
24 other people who have bad reputations. And frankly,
25 Ms. Pomerantz, to suggest otherwise is to show a lack of

LCGVMAX5

Loftus - cross

1 respect for the Court. You could, Ask after a trial, did you
2 have a profile done about you? It's obvious what you're trying
3 to do. It's impermissible on 403 grounds, 401/403 grounds.
4 There's lots of ways of asking it without trying to just draw
5 associations in the jurors' minds with other defendants for
6 whom she's testified.

7 So you won't do that. Sustained.

8 You can ask general questions that go to incentive to
9 testify in high-profile, I'll allow it. But don't do what
10 you're doing.

11 MS. POMERANTZ: Yes, your Honor.

12 (Continued on next page)

LCGVMAX5

Loftus - cross

(In open court)

BY MS. POMERANTZ:

Q. After your testimony at certain high-profile trials, you've had articles written about you; isn't that right?

A. I've had articles written about me or my work for decades.

Q. The question was -- and let me ask it a little differently.

After your testimony at certain trials, you've participated in interviews with the press about your testimony as a defense witness; isn't that right?

A. I have. If somebody asks me questions about it, yes.

THE COURT: Could you pull up a little closer to the microphone, please. Thank you.

THE WITNESS: Sorry, your Honor.

THE COURT: That's okay. Thank you.

Q. And in your book, *Witness for the Defense*, you have -- you devote multiple chapters to different individuals on whose behalf you testified as a defense witness; isn't that right?

A. Yes.

Q. And each time you've done -- you've testified on behalf of famous high-profile defendants, it's brought you more business, right?

A. I don't know if -- maybe.

Q. Your work focuses on research and experiments, right?

A. The scientific work, yes, primarily.

Q. You're not a clinician, right?

LCGVMAX5

Loftus - cross

1 A. Correct.

2 Q. You're not licensed as a psychologist, right?

3 A. No, we don't get licensed as experimental psychologists.

4 Q. You don't see patients, right?

5 A. Correct.

6 Q. You've never treated a single patient, right?

7 A. Correct.

8 Q. You've never seen a patient or client for therapy, right?

9 A. No, not for therapy, no.

10 Q. You do not treat victims of traumatic events, right?

11 A. I don't officially treat anyone.

12 Q. Now, the opinions that you've given today about memory are
13 based in significant part on your research and experiments,
14 right?

15 A. Not only my work, the work of many other scientists who
16 work in this field.

17 Q. They are based in part on your -- based in significant part
18 on your research and experiments, right?

19 A. Well, many of the experiments on -- particularly on
20 misinformation are my experiments, yes.

21 Q. You've conducted many experiments over the years, right?

22 A. Yes.

23 Q. I want to talk about some of those experiments now.

24 One of your experiments involves Bugs Bunny, right?

25 A. A bunny.

LCGVMAX5

Loftus - cross

1 Q. Bugs Bunny?

2 A. Bugs Bunny, yes.

3 Q. And in that experiment, you tried to get people to think
4 that they met Bugs Bunny at Disneyland, right?

5 A. Correct.

6 Q. That experiment involved an advertisement for Disneyland
7 that includes a picture of Bugs Bunny, right?

8 A. That was involved in that study, yes.

9 Q. And that would be impossible because Bugs Bunny is Warner
10 Brothers, right?

11 A. That's exactly why we did the study, yes.

12 Q. Okay. So that experiment involved the use of fake
13 photographs, right?

14 A. Fake drawings, yes.

15 Q. And then you ask people in this experiment whether they had
16 met Bugs Bunny at Disney, right?

17 A. On a childhood trip to Disney, yes.

18 Q. And in that experiment, about 16 percent of people went
19 along with the suggestion, right?

20 A. Well, I don't -- it's been a while since I've looked at the
21 actual data. I don't remember the exact number, but some
22 percentage claim that they met Bugs Bunny at a Disney resort.

23 Q. We can pull up that study if that would be helpful for you
24 to see the percentage. It's Government Exhibit 1511.

25 MS. STERNHEIM: Judge, I'm going to object. And I

LCGVMAX5

Loftus - cross

1 will give my reasons at sidebar, if you like.

2 THE COURT: Let me look at 1511.

3 Can we get the background erased, Ms. Williams.

4 You can come up. Thank you.

5 (Continued on next page)

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LCGVMAX5

Loftus - cross

1 (At sidebar)

2 MR. PAGLIUCA: Your Honor, the objection is that this
3 is far afield from her expert testimony. We're picking one
4 study out of hundreds and then going into it.

5 When I attempted to cross-examine Dr. Rocchio on a
6 study that she relied on, I was precluded from doing that and I
7 think the objection was similar. And the Court sustained the
8 objection saying, you know, we're not going to go into all of
9 the studies that she may or may not have relied on in support
10 of her testimony.

11 This is similar to that. Dr. Loftus is testifying
12 about a broad range of studies; and to single one out is, you
13 know, overly prejudicial, not very helpful to the jury, doesn't
14 go to any of the opinions that she's offered in this case.

15 THE COURT: I'm sorry, can you remind me of the
16 parallel objection.

17 MR. PAGLIUCA: Yes. There was a study that was given
18 to the prosecution by Dr. Rocchio on hindsight bias and --
19 basically hindsight bias and what went into hindsight bias.

20 THE COURT: You were trying to introduce affirmative
21 evidence through that study and not using it to impeach her
22 reliance on it; correct?

23 MR. PAGLIUCA: I disagree. I was trying to impeach
24 her and using some of the words from that study to impeach her
25 on what her opinions were during trial. That was the purpose

LCGVMAX5

Loftus - cross

1 of doing it. And I think this is analogous to that, if not
2 exactly the same.

3 MS. POMERANTZ: Your Honor, this witness has testified
4 about her extensive findings on memory that are based on
5 multiple experiments. This is one of the experiments, so they
6 asked her about certain experiments on direct examination.
7 This is one of the studies that she herself conducted, and so I
8 don't see how this is a parallel question. It's presented for
9 the Court. This is part of the experiments that she used and
10 that she conducted that forms the basis of her opinions.

11 MR. PAGLIUCA: I think part of the analysis -- I'm
12 sorry, I didn't mean to cut you off, if you were finished.

13 MS. POMERANTZ: It's quite distinct from Dr. Rocchio,
14 who wasn't testifying. That was something, as your Honor
15 pointed out, that the defense is trying to introduce for
16 cross-examination, and it wasn't an article that she had
17 written. It's quite distinct.

18 THE COURT: Overruled.

19 (Continued on next page)
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LCGVMAX5

Loftus - cross

1 (In open court)

2 BY MS. POMERANTZ:

3 Q. I'm going to direct you on Government Exhibit 1511 to page
4 17.

5 MS. POMERANTZ: If we can pull that up.

6 A. How do you pull it up?

7 MS. POMERANTZ: Is that not on the witness's screen?

8 A. Oh, okay. Yes.

9 MS. POMERANTZ: Okay. Great. The lines are now
10 removed. Thank you very much.

11 Q. And I want to just direct your attention to the first
12 paragraph under "Discussion." You see it says: For example,
13 16 percent of people claim that they shook hands with Bugs
14 after receiving the false Bugs ad. Do you see that?

15 A. Yes.

16 MS. POMERANTZ: Okay. We can pull that down.

17 Q. So in this experiment, about 16 percent of people went
18 along with the suggestion that they had met Bugs Bunny at
19 Disney, right?

20 A. You'll have to put that back up because --

21 MS. POMERANTZ: We can pull that back up.

22 THE COURT: Is it in her binder as well, the full
23 study, Ms. Pomerantz? Is it in the binder?

24 MS. POMERANTZ: Yes.

25 Your Honor, I'm happy to move on from this.

LCGVMAX5

Loftus - cross

1 THE COURT: Okay.

2 Q. The thing that the subjects got wrong was that they saw
3 Bugs Bunny at Disneyland, right?

4 THE COURT: You said you were going to move on. But I
5 just want to direct her. She wants to look at the study to
6 refresh, if you're going to ask her questions about it, if it's
7 in the binder.

8 MS. POMERANTZ: Your Honor, I meant, sorry, I was
9 going to move on from the percentage.

10 THE COURT: Oh, okay. Let me look at the question.

11 All right. Go ahead. You may ask.

12 BY MS. POMERANTZ:

13 Q. The thing that the subjects got wrong was that they saw
14 Bugs Bunny at Disneyland, right?

15 A. The study is 20 years old. But according to what you just
16 showed me, 16 percent claim that they shook his hand. Others
17 claim they touched his tail or touched his ear or heard him say
18 What's up, Doc? And Bugs Bunny would not be at a Disney resort
19 because it's a Warner Brothers character. And that was the
20 whole point of this study.

21 Q. All right. I'm going to turn to a different experiment.

22 You testified on direct about an experiment involving
23 a simulated car accident, right?

24 A. Yes.

25 Q. And the misinformation was that the car accident involved a

LCGVMAX5

Loftus - cross

1 yield sign, not a stop sign, right?

2 A. It was the critical item, yes.

3 Q. Okay. But to be clear, the research subjects still
4 remembered the simulated accident, right?

5 A. Presumably, yes.

6 Q. Okay. In that experiment, did any of the experiment
7 subjects face the possibility of getting charged with a crime
8 if they lied to you?

9 A. No.

10 Q. Now, in that experiment, you changed one fact, that's the
11 yield sign stop sign, right?

12 A. Or vice-versa.

13 Q. You've done other experiments where you've changed more
14 than one fact, right?

15 A. Yes.

16 Q. There is, I think, a science museum experiment?

17 A. Yes.

18 Q. And in that study you tried to change two facts, right?

19 A. Correct.

20 Q. People went to a museum and they watched a short video,
21 right?

22 A. Yes.

23 Q. And in that video, a blue car rushed towards a person for
24 eight seconds, right?

25 A. I don't -- the car was blue, the offending car, yes.

LCGVMAX5

Loftus - cross

1 Q. Okay. And then folks, after watching the video, they
2 walked through the museum and then they are asked some
3 questions, right?

4 A. Correct.

5 Q. And during that questioning, certain details were
6 distorted, right?

7 A. I believe that we had deliberately tried to change the
8 color of the car in their memory.

9 Q. The color of the car was changed in the questions from blue
10 to white, right?

11 A. Something like that, yes.

12 Q. And there was a color of a jacket that was changed in
13 questions from, I believe, blue to black, right?

14 A. Well, I mostly remember the blue car, so --

15 Q. And in that study, some of the research subjects were
16 fooled by one changed fact about the color of the car, right?

17 A. Yes.

18 Q. But the research subjects were not fooled by the attempt to
19 change the second fact, right?

20 A. I believe that's what happened in that study, yes.

21 Q. Okay. You've also conducted an experiment about planting a
22 false memory of someone being lost in a mall, right?

23 A. That's a study that we did in the mid '90s, yes.

24 Q. And that study involved about 24 participants, right?

25 A. Yes.

LCGVMAX5

Loftus - cross

1 Q. And the participants were between the ages of 18 to 53,
2 right?

3 A. Yes.

4 Q. And you tried to implant a false memory, right?

5 A. We tried to suggest to them that they, as a child, have
6 been lost in a shopping mall for an extended period of time and
7 then rescued by an elderly person and reunited with their
8 family.

9 Q. So research subjects were -- they were shown one-paragraph
10 stories describing four events, right?

11 A. Well, again, that was a 1995 paper; but the fine details of
12 the method, that sounds close, yes, but --

13 Q. So but there were three true stories and one false one,
14 right?

15 A. Yes.

16 Q. Okay. And you told the subjects that you talked to their
17 parents, right?

18 A. Yeah, or an older sibling.

19 Q. So a parent or older sibling, right?

20 A. Yes.

21 Q. And you found out from the parents experiences that had
22 happened to the subjects when they were children, right?

23 A. Yes, some true experiences.

24 Q. Right. For the three true ones, right?

25 A. Yes.

LCGVMAX5

Loftus - cross

1 Q. Okay. And then you presented the subjects with the three
2 true memories that their parents had told you about, right?

3 A. Yes.

4 Q. And then you presented the subjects with the false memory
5 that the subject was lost in the mall when the subject was five
6 or six years old, right?

7 A. With more specifics, yes, but that's basically correct.

8 Q. And the subject was told that the false memory of being
9 lost in the mall was something that their family members said
10 had happened, right?

11 A. That was strongly suggested in the study, yes.

12 Q. And sometime later, you conducted an interview of the 24
13 participants in that study, right?

14 A. Yeah, we tested them, I guess, a few times.

15 Q. And 25 percent -- about 25 percent remembered some of the
16 false event, which means 75 percent did not, right?

17 A. Correct.

18 Q. Okay. Isn't it true that studies have shown that in the
19 extreme case where participants are given blatantly
20 contradictory suggestions, they are sometimes not susceptible
21 to suggestion or misinformation at all?

22 A. We did a study where we tried to give a blatantly false
23 suggestion and people resisted it, yes.

24 Q. You, yourself, you published a paper called *Reactions to*
25 *Blatantly Contradictory Information*, right?

LCGVMAX5

Loftus - cross

1 A. Correct.

2 Q. In other words, if something contradicts the true events so
3 blatantly, the memory is not as susceptible to suggestion,
4 right?

5 A. In that particular study, yes, that was -- that was a
6 wallet-snatching crime. And we were not able to mislead people
7 about the color of the wallet, which was a very obvious,
8 obvious, strong detail.

9 Q. You're familiar with a study conducted by Kathy Pezdek in
10 which Pezdek presented 20 subjects with one true memory and two
11 false memories, right?

12 A. Well, I know about that study, yes.

13 Q. And one of the false memories was being lost in the mall,
14 right?

15 A. Yes.

16 Q. And the other false memory was receiving something called a
17 rectal enema, right?

18 A. Correct.

19 Q. And I'm not going to ask you to describe a rectal enema,
20 but it's fair to say that that's an intrusive bodily procedure,
21 right?

22 A. Yes.

23 Q. Three of the 20 subjects remembered having been lost in the
24 mall, right?

25 A. Something like that in her study, yes.

LCGVMAX5

Loftus - cross

1 Q. And none of the 20 subjects remembered the rectal enema,
2 right?

3 A. None of the 20 remembered the scenario that they were
4 presented with involving a rectal enema. But they weren't told
5 they even saw it.

6 Q. Pezdek tried to instill a false memory of subjects of
7 having a rectal enema, but she did not succeed in doing that,
8 right?

9 A. She did not; correct.

10 Q. You testified on direct examination about post-event
11 contamination, right?

12 A. Yes.

13 Q. Young children are more susceptible to post-event
14 contamination than adults, right?

15 A. Typically, very young children, yes.

16 Q. And we're talking about children under the age of six,
17 right?

18 A. Correct.

19 Q. Not all memory is retained equally, right?

20 A. Right.

21 Q. Not all memory is retrieved equally, right?

22 A. Correct.

23 Q. If there was an event like the birth of your first child,
24 it would be very rare to forget that over time, right?

25 A. I would think that would be hard to forget.

LCGVMAX5

Loftus - cross

1 Q. I want to talk about memories of trauma.

2 The core memory of trauma is stronger than other types
3 of memory, right?

4 A. There are studies that show typically people can remember a
5 core event and some core details, support for that proposition,
6 yes.

7 Q. People tend to remember the core or essence of trauma
8 events, right?

9 A. They can, yes.

10 Q. People may forget some of the peripheral details of a
11 trauma event, right?

12 A. That can happen, yes.

13 Q. But the core memories of a trauma event remain stronger,
14 right?

15 A. I probably agree with that.

16 Q. And people who are involved in the trauma event tend to
17 remember the core or gist of the event better than those who
18 are nonparticipants, right?

19 A. There are at least one or two studies that show that if you
20 participate, your memory is somewhat better than if you're just
21 observing.

22 Q. And if a person is involved in repetitive traumatic
23 experiences, they are more likely to remember it, right?

24 A. Generally, the more times something happens to you, the
25 better your memory; or the more times you're exposed to

LCGVMAX5

Loftus - cross

1 something, the better your memory.

2 Q. That's a fundamental principle of human memory, right?

3 A. Yes, frequency, yes.

4 Q. Now, we've talked today about some of the experiments you
5 have done. And you talked about experiments you've done that
6 involved videos of car crashes, people being lost in the malls,
7 things like that, right?

8 A. Among other things, yes.

9 Q. Now, obviously you've never done a study where you arranged
10 for teenage girls to be sexually abused, right?

11 A. Correct.

12 Q. You've never done a study of how well those girls remember
13 that sexual abuse years later, right?

14 A. Well, I've done studies where we interview people who were
15 sexually abused about what they remember.

16 Q. The question I'm asking you is have you conducted a study
17 where you arranged for girls to be sexually abused?

18 A. No, absolutely not.

19 Q. You haven't conducted a study where you saw girls being
20 sexually abused, right?

21 A. Correct.

22 Q. You've never conducted a study in which you attempted to
23 implant a false memory of childhood sexual abuse?

24 A. We have not.

25 MS. POMERANTZ: May I have one moment, your Honor?

LCGVMAX5

Loftus - redirect

1 THE COURT: Okay.

2 (Counsel conferred)

3 MS. POMERANTZ: Nothing further, your Honor.

4 THE COURT: All right.

5 MS. STERNHEIM: Briefly.

6 THE COURT: Yes.

7 REDIRECT EXAMINATION

8 BY MS. STERNHEIM:

9 Q. Professor Loftus, you've been conducting experimental
10 psychology research for over 50 years; correct?

11 A. Correct.

12 Q. You have received numerous awards for lifetime achievement
13 for the work that you have done?

14 MS. POMERANTZ: Objection.

15 THE COURT: Sustained.

16 Q. You were asked a number of questions about studies here;
17 correct?

18 A. Correct.

19 Q. Some that you actually conducted and some that were
20 conducted by others; correct?

21 A. Yes.

22 Q. You were asked questions about studies that would involve
23 sexual abuse; correct?

24 A. Yes.

25 Q. And earlier I had asked you whether there were certain

LCGVMAX5

Loftus - redirect

1 restrictions placed upon the type of experiments that a
2 psychologist is allowed to perform?

3 MS. POMERANTZ: Objection.

4 THE COURT: Overruled.

5 A. Yes, you did.

6 Q. And please explain to the jury why that is.

7 MS. POMERANTZ: Objection.

8 Asked and answered, your Honor.

9 THE COURT: I'll allow it.

10 A. The human subjects review committees at universities and
11 colleges are in place to try to protect human beings from being
12 involved in experiments that might be harmful to them. And so
13 that is why these committees will review your proposal for a
14 piece of research and either allow you to go forward with your
15 proposal or not allow you to go forward or suggest
16 modifications that would allow you to go forward.

17 But their interest is in making sure -- or trying to
18 ensure that you're not doing something to harm the research --
19 that might harm the research participants. That's why we
20 would, as I thought I indicated earlier in my testimony, would
21 not be probably, you know, allowed to deliberately plant
22 memories of sexual abuse.

23 Q. On cross-examination, the government had suggested that you
24 are a profiteer when you testify for the defense. Do you
25 remember that?

LCGVMAX5

Loftus - redirect

1 MS. POMERANTZ: Objection.

2 A. Yes, I do.

3 THE COURT: I'm going to sustain.

4 Q. They took issue with the fact that you have testified in
5 criminal cases predominantly for the defense?

6 MS. POMERANTZ: Objection.

7 THE COURT: Grounds.

8 MS. POMERANTZ: Mischaracterization, your Honor.

9 THE COURT: Overruled.

10 Q. You have worked as a consultant for the federal government,
11 have you not?

12 A. Yes.

13 Q. For the Secret Service; correct?

14 A. Yes.

15 Q. For the Department of Justice; correct?

16 A. Yes.

17 Q. For the FBI; correct?

18 A. Yes.

19 Q. For the Internal Revenue Service; correct?

20 A. Yes.

21 Q. And those entities were aware that you have provided
22 testimony for defendants in criminal matters; correct?

23 MS. POMERANTZ: Objection.

24 THE COURT: Grounds.

25 MS. POMERANTZ: Foundation.

LCGVMAX5

Loftus - redirect

1 THE COURT: Sustained.

2 Q. The testimony that you gave here today, would it have been
3 any different if you had been called to the stand by the
4 government?

5 A. I don't think -- I don't see how it would have been any
6 different. I think in the case where I did testify for the
7 prosecution, it was similar testimony.

8 Q. And if the prosecution had called you, you would have been
9 available to be a witness for them, wouldn't you?

10 A. I might have been.

11 MS. STERNHEIM: No further questions. Thank you.

12 THE COURT: Ms. Pomerantz?

13 MS. POMERANTZ: No, nothing further from the
14 government. Thank you, your Honor.

15 THE COURT: Thank you. All right.

16 Professor Loftus, you may step down. You are excused.

17 (Witness excused)

18 THE COURT: Defense may call their next witness.

19 MS. STERNHEIM: I'm just going to move please.

20 THE COURT: Sure.

21 Mr. Everdell?

22 MR. EVERDELL: Yes, your Honor.

23 The defense calls Michael Aznaran.

24 THE COURT: Okay.

25 He may come forward.

LCGVMAX5

Aznaran - direct

1 MICHAEL WILLIAM AZNARAN,

2 called as a witness by the Defendant,

3 having been duly sworn, testified as follows:

4 THE COURT: You may inquire, Mr. Everdell.

5 MR. EVERDELL: Yes, your Honor. I believe the
6 government may have an objection to the exhibit we plan to
7 admit through this witness, so we may need to be heard at
8 sidebar before we begin the examination.

9 THE COURT: Can we start and then we can take it at
10 the break?

11 MR. EVERDELL: There's some questioning before we get
12 to the exhibit, your Honor, so yes.

13 THE COURT: Okay.

14 MR. EVERDELL: Thank you.

15 THE COURT: Is that okay, Ms. Pomerantz?

16 MS. POMERANTZ: Yes. Thank you, your Honor.

17 THE COURT: All right. Thank you.

18 You may inquire.

19 MR. EVERDELL: Thank you, your Honor.

20 DIRECT EXAMINATION

21 BY MR. EVERDELL:

22 Q. Good afternoon, Mr. Aznaran.

23 A. Good afternoon.

24 Q. How old are you, sir?

25 A. Thirty-seven.

LCGVMAX5

Aznaran - direct

1 Q. Where do you work?

2 A. I currently work for U.S. Customs and Border Protection
3 here in Manhattan at the New York/New Jersey HIDTA task force.

4 Q. What is Customs and Border Protection?

5 A. It's a federal law enforcement agency that mainly works out
6 of the land border seaports and airports around the United
7 States.

8 Q. And generally, what functions do they serve at the borders?

9 A. Basically, checking incoming either passengers or land
10 border travelers entering the United States.

11 Q. Did Customs and Border Protection used to be known as
12 something else in the past?

13 A. It did, yes.

14 Q. What was that?

15 A. It's actually made up of two legacy agencies. One was the
16 INS, Immigration and Naturalization Service; the other one was
17 USCS, U.S. Customs service.

18 Q. Okay. And those are both now combined in CBP or Customs
19 and Border Protection?

20 A. Yes.

21 Q. Okay. How long have you worked at Customs and Border
22 Protection?

23 A. Since July of 2008.

24 Q. And can you just describe the different positions you've
25 held at CBP and your duties and responsibilities in those

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Aznaran - direct

1 positions.

2 A. Sure. July of 2008, I entered the service. I went to the
3 academy for about four months. When I got back from the
4 academy, I was assigned to John F. Kennedy International
5 Airport, passenger operations.

6 Q. Can you explain what passenger operations is?

7 A. Yes. It's considered what we call the core process. So
8 any travelers that are coming into the United States at JFK,
9 when they get off the plane from a foreign country, they have
10 to go down to what's called an FIS, a federal inspection site.

11 At that site, we have officers, uniformed officers, in
12 booths that basically check the -- check each and every
13 traveler, swipe their passports, and either admit them or deny
14 them entry into the United States.

15 Q. So are those the folks that are in the booths or the kiosks
16 you show your passport to when you're traveling internationally
17 when you arrive?

18 A. Yes.

19 Q. Okay. So how long did you do that job for?

20 A. I did that for approximately three and a half years.

21 Q. Okay. And did you say which airport you were in?

22 A. JFK, John F. Kennedy.

23 Q. What did you do after that?

24 A. At that point I was selected to go up to what's -- what
25 used to be called PAU, passenger analysis unit. And more

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1 specifically, I was assigned to what's called RCLG, regional
2 carrier liaison group.

3 Q. Can you explain for the jury what the passenger analysis
4 unit is and what the RCLG is?

5 A. Sure. PAU used to be mainly an intel center made up of
6 several different functions such as narcotics, terrorism, and
7 RCLG. RCLG, we were more or less liaisons that would
8 communicate with airline and airport employees in foreign
9 countries. And we would make recommendations to those airline
10 employees if we basically found or noticed a particular
11 passenger that would be on one of their flights coming into the
12 United States that might have some kind of an issue being
13 admitted into the United States.

14 We would then, if we did find a passenger such as
15 this, we would recommend to that airline to do what we call an
16 offload. So it's just a recommendation to that airline saying,
17 If this passenger does travel on your airline into the United
18 States, there is either a high probability or a certainty that
19 they will not be admitted, be able to be admitted into the
20 United States. We recommend they go to the closest embassy and
21 get their issue figured out there.

22 Q. How long did you do that work for at CBP?

23 A. Roughly four and a half years.

24 Q. And did you have a position after that?

25 A. I did. In 2015, I was promoted to first line supervisor,

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1 at which point I was then placed back into passenger
2 operations.

3 Q. And that's what we discussed before?

4 A. Yes.

5 Q. This time you were a supervisor?

6 A. Yes.

7 Q. I see.

8 And what airport were you working there?

9 A. Same airport, John F. Kennedy International.

10 Q. And is that your current position?

11 A. It is not.

12 Q. What position did you hold after that?

13 A. So in April of 2018, still as a supervisor, I was selected
14 to be a task force officer with the New York/New Jersey HIDTA
15 task force.

16 Q. What's HIDTA?

17 A. HIDTA is H-I-D-T-A, high intensity drug trafficking area.

18 Q. What does that mean? What did you do for HIDTA? What's
19 the mission?

20 A. So I'm still currently assigned to HIDTA.

21 My function is basically to act as a liaison between
22 my agency, Customs and Border Protection, and the roughly 30 to
23 35 other law enforcement agencies that also have
24 representatives at HIDTA.

25 Q. And how long have you held that post?

LCGVMAX5

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1 A. Since April of 2018, so almost four years now.

2 Q. And that's your current position?

3 A. Correct.

4 Q. All right. Mr. Aznaran, does Customs and Border Protection
5 keep records on people that are entering or exiting the United
6 States?

7 A. Yes.

8 Q. And where is that information stored?

9 A. It's stored in the system that we call TECS, T-E-C-S,
10 Treasury Enforcement Communication System.

11 Q. Okay. And are you familiar with the TECS system?

12 A. Yes.

13 Q. Can you just describe what the TECS system is.

14 A. It's a -- it's a law enforcement system which acts as a
15 platform. It collects data from several other systems and kind
16 of compiles it into one system that CBP -- we own and control
17 TECS. So we are able to utilize all that information to see
18 who's coming into or possibly departing the United States.

19 We also have access to NCIC, National Crime
20 Intelligence Center. So we can see if people have warrants for
21 their arrest, missing persons, things of that nature.

22 Q. So you mentioned that TECS pulls information from lots of
23 different sources; is that right?

24 A. Yes.

25 Q. What sorts of information does the TECS system store from

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1 these sources?

2 A. You have -- you have travel -- I'm sorry, international
3 travel records, you have passengers' travel documents, such as
4 passports and visas. We are able to do queries of addresses,
5 vehicles, license plates. NCIC, as I mentioned, already
6 warrants missing persons, stolen vehicles.

7 Q. And does the information you just mentioned include also
8 border-crossing information?

9 A. Yes.

10 Q. Now, with respect to border-crossing information, what
11 kinds of information are stored in the TECS system?

12 A. As far as border crossing?

13 Q. Yes, specifically border crossing.

14 A. So within the aviation and vessel or, more commonly known
15 as cruise line information, you would normally have somebody's
16 full name, their passport number that they are using to travel,
17 what location they are traveling from, what location they are
18 traveling to, if they are traveling into an airport, which
19 airport they are traveling, the site code.

20 (Continued on next page)

LCGCmax6

Aznaran - direct

1 BY MR. EVERDELL:

2 Q. And just to be clear, when I refer to border crossing, what
3 does that mean to you?

4 A. That, it could mean either any international traveler
5 coming into the United States at any international airport,
6 seaport, or land border along the Mexican or northern border of
7 Canada.

8 Q. And the information you just listed is stored in the TECS
9 system for those passengers that are entering through ports of
10 entry; is that right?

11 A. Yes.

12 Q. How far back do the border crossing records go in the TECS
13 system?

14 A. It's hard to say. In my experience, I have not seen any
15 border crossings any earlier than roughly the early '90s, mid
16 '90s.

17 Q. And how does the border crossing information that is stored
18 in the TECS system get input into that database?

19 A. So, there is another system, it's called APIS, Advanced
20 Passenger Information System, and essentially what happens is
21 international airlines or any airline that has international
22 flights coming into or departing the United States, they're
23 required to submit their manifest to us. The manifest gets
24 loaded into APIS, which is then linked to text, and that's how
25 we're able to see that information.

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Aznaran - direct

1 Q. What sort of information is contained in the manifest from
2 the airlines?

3 A. Generally, the name of the passenger, their date of birth,
4 the document that they're using, whether it's a passport or a
5 green card, the flight information, the carrier code, the
6 flight number, where they're traveling from and where they're
7 traveling to.

8 Q. Is there any information in the TECS system about a border
9 crossing that gets supplied by those immigration officials we
10 talked about at the primary immigration line as opposed to the
11 airlines?

12 A. No.

13 Q. So the people who check you in through the kiosks, is there
14 any information that gets input from there?

15 A. Not by the officers themselves. Once a passenger is
16 processed, there are certain fields that will be automatically
17 updated.

18 Q. But those fields get updated once they go through the
19 immigration line; right?

20 A. Yes.

21 Q. That doesn't come from the airlines?

22 A. No.

23 Q. For the information that comes from the airlines, the
24 information you mentioned, how soon after the flight takes off
25 does that information get input into the TECS system?

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Aznaran - direct

1 A. It's supposed to be what's called the securing of flight
2 doors. So once the door to the aircraft is shut, the
3 information or the manifest is supposed to be sent to APIS.

4 Q. So the manifest information is supposed to reflect the
5 people who are on board at the time the doors are shut at the
6 gate?

7 A. Yes.

8 Q. Before wheels up, I guess?

9 A. Yes.

10 Q. All right. And how soon after the traveler passes through
11 the immigration line at the kiosk is that information populated
12 into the TECS system?

13 A. I'm sorry. Could you repeat the question.

14 Q. You mentioned that certain information gets populated after
15 the traveler goes through the immigration line at, say, the
16 airport they're coming into; right?

17 A. Yes.

18 Q. How soon after the passenger travels through that
19 immigration line does that information hit the system, hit the
20 TECS system?

21 A. It should be at that same time.

22 Q. And is it the regular practice of customs and border
23 protection to keep this type of border crossing information in
24 its records in the TECS system?

25 A. Yes.

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Aznaran - direct

1 Q. Is the text database searchable?

2 A. Yes.

3 Q. And what fields can you search with?

4 A. You could search by name, last name, first name. You could
5 search by a combination of last name, first name, and date of
6 birth. You could search by a passport number. You could
7 search by a visa number.

8 Q. And those names you mentioned, those are the names of the
9 travelers; right?

10 A. Yes.

11 Q. So can you search by a particular traveler?

12 A. Yes.

13 Q. Can you limit the search to a particular timeframe?

14 A. Yes.

15 Q. Now, if you search the TECS system for the border crossing
16 records for a particular traveler, what does the database
17 generate?

18 A. It would generate basically any border crossings or
19 encounters for that particular person within that timeframe.
20 It would basically be like rows of information for each
21 encounter or border crossing.

22 Q. And it would be for whatever time period you put in for;
23 right?

24 A. Yes.

25 Q. And then that report contains the information that you had

LCGCmax6

Aznaran - direct

1 been discussing?

2 A. Yes.

3 Q. Are those reports generated in the normal course of CBP's
4 regularly conducted activity?

5 A. Yes.

6 Q. Mr. Aznaran, did there come a time when you were asked to
7 search the TECS system for certain border crossing records
8 related to this case?

9 A. Yes.

10 Q. And were you asked to search for certain travelers?

11 A. Yes.

12 Q. How many travelers were you asked to search for?

13 A. Three.

14 Q. And do you know the names of those travelers without
15 telling me the name?

16 A. I do.

17 Q. So I want to show you first what is admitted under seal as
18 Government Exhibit 12.

19 MR. EVERDELL: With the Court's permission, I'll show
20 it just to the Court and the deputy and the witness. GX12,
21 please, under seal.

22 Q. Mr. Aznaran, do you see that on your screen, that document?

23 A. Yes.

24 Q. That's a document that's already in evidence under seal as
25 Government Exhibit 12. Do you see the name on that document?

LCGCmax6

Aznaran - direct

1 Just a yes or no.

2 A. Yes.

3 Q. I'm going to refer to that person as Jane and you should,
4 as well. All right?

5 A. Yes.

6 Q. Was Jane one of the people whose border crossing records
7 you were asked to search for?

8 A. Yes.

9 MR. EVERDELL: We can remove that.

10 Now I want to bring up what's also in evidence already
11 under seal as Defendant's Exhibit LV4. With the Court's
12 permission, just show it to the Court, the deputy, and the
13 witness.

14 THE COURT: Okay.

15 Q. Mr. Aznaran, do you see that document?

16 A. Yes.

17 Q. You're looking at a document already in evidence under seal
18 as LV4. Do you see the name on that document? Yes or no.

19 A. Yes.

20 Q. I'm going to refer to that person as Kate, and you should,
21 as well. All right?

22 A. Yes.

23 Q. Was Kate one of the people whose border crossing records
24 you were asked to search for?

25 A. Yes.

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Aznaran - direct

1 MR. EVERDELL: All right. We can bring that down.

2 Q. Are you also familiar with the name, Annie Farmer?

3 A. Yes.

4 Q. Was Annie Farmer one of the people whose border crossing
5 records you were asked to search for?

6 A. Yes.

7 Q. So were Jane, Kate, and Annie Farmer the records you were
8 asked to search for in the TECS system?

9 A. Yes.

10 Q. Were you asked to search for the records in a particular
11 date range?

12 A. Yes.

13 Q. What was that date range?

14 A. It was from January 1st, 1994, to December 31st, 2010.

15 Q. Did you perform those searches?

16 A. Yes.

17 Q. And when did you conduct that search?

18 A. A few days ago.

19 Q. Did the TECS system generate the three reports from those
20 searches?

21 A. Yes.

22 MR. EVERDELL: Your Honor, at this time, I think we
23 may need to have our sidebar.

24 THE COURT: I'll give the jurors their mid afternoon
25 break. We'll resume in about 15 minutes. Thank you.

LCGCmax6

Aznaran - direct

1 (Jury not present)

2 THE COURT: Okay. Mr. Everdell.

3 MR. EVERDELL: Your Honor, the exhibit is marked for
4 identification as MA1, and I'll hand up a paper copy to the
5 Court, and I believe the government has a copy, but I have
6 another one for them, as well.

7 THE COURT: Okay. I'll hear the objection.

8 MS. POMERANTZ: Thank you, your Honor. Just briefly,
9 the question posed to the defense is what is the relevance of
10 these records, and in particular, we're talking about victim
11 travel records that go over 15 years of victim travel records
12 that extend well beyond the period charged in the indictment.
13 And so, we would ask for a proffer of relevance for the
14 admissibility of such extensive travel information, private
15 information of the victims.

16 THE COURT: So no objection within the charged
17 timeframe?

18 MS. POMERANTZ: No objection.

19 MR. EVERDELL: Your Honor, for example, these records
20 go up to 2010, which was the cutoff point for the request when
21 we issued the subpoena, we, in fact, negotiated with the
22 government over how broad the subpoena would be and we agreed
23 that it would go to 2010.

24 Now, as to the relevance -- and that's why the records
25 go that far.

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Aznaran - direct

1 As to the relevance, I mean, for example, we see
2 Jane's travel records going all the way up to 2010. Jane
3 testified in this case already that she continued to travel
4 after she had left New York and continued to travel, and I
5 think this is, if it's already in the record, that she
6 continued to travel. I don't think this is in any way
7 prejudicial --

8 THE COURT: I just would like to know what the
9 relevance is.

10 MR. EVERDELL: Your Honor, she also testified -- Jane,
11 I'm referring to -- that she came from a family that did not
12 have much means when she first -- when she was younger. She
13 testified extensively about the fact that she didn't have much
14 money, and these records show extensive foreign travel, going
15 on well into the 2010s. So it tends to counter that.

16 Same thing with Annie Farmer. She said she came from
17 a family with a single mother, didn't have much money, and
18 these travel records show travel to Mexico and places like
19 that.

20 For Kate, there was a discussion about she traveled
21 after the incidents that she talked about in the United Kingdom
22 and she was open-ended about how often she traveled and how
23 long she traveled. And there was also testimony that she was
24 still in contact with Jeffrey Epstein well into the 2000s. I
25 think some of the emails are in the 2010s, 2015. So these

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Aznaran - direct

1 travel records show her whereabouts and show her traveling
2 around the same time when she's still in contact with Jeffrey
3 Epstein.

4 THE COURT: What's the relevance of that?

5 MR. EVERDELL: Your Honor, I don't plan to make much
6 of an argument about those records that are happening after the
7 charged time period --

8 THE COURT: You haven't asserted any relevance with
9 respect to after the -- where is the government with respect to
10 the time cutoff request?

11 MS. POMERANTZ: Your Honor, our proposal would be that
12 it would be redacting anything that postdates the charged
13 conspiracy.

14 MR. EVERDELL: Your Honor, there is probably a
15 practical solution that we could come to with this, because I
16 don't think that we -- you want to give me a moment, your
17 Honor. I'll just confer with my colleagues.

18 THE COURT: Okay.

19 MR. EVERDELL: Your Honor, one other point about Kate
20 in particular, I believe her testimony was that she was on
21 public assistance at some point in her life that correspond to
22 when she's flying all over the world. So I think that those
23 records --

24 THE COURT: Is that during the time of the charged
25 conspiracy?

LCGCmax6

Aznaran - direct

1 MR. EVERDELL: I don't know if she put a timeframe on
2 exactly when that was. I'm told it was not -- she testified it
3 was not during the period of the charged conspiracy when she
4 was on public assistance, but she did testify to it and that's
5 now on the record, and if these records tend to counter that
6 point, that she had made that point to the jury, I think we
7 could use these records to show that.

8 With the other travelers, your Honor, I think we can
9 come to a practical solution.

10 THE COURT: See if you can come to a solution and you
11 can tell me where we are. We'll break for 10 minutes.

12 (Recess)

13 THE COURT: All right. Where are we?

14 MR. EVERDELL: Your Honor, we conferred with the
15 government. We reached agreement as to redactions and other
16 omissions from this exhibit and we're just now printing new
17 copies of the revised exhibit. We have about half of those
18 copies. It's coming up right now and we'll have the other half
19 shortly in just a couple minutes.

20 THE COURT: Okay.

21 MR. EVERDELL: Your Honor, I have your copy I'll hand
22 up, and one to the government, and we'll put one, with the
23 Court's permission, facedown in the witness box.

24 THE COURT: Okay. Ms. Pomerantz, acceptable?

25 MS. POMERANTZ: Yes, your Honor.

LCGCmax6

Aznaran - direct

1 THE COURT: Okay. We can bring in the witness.

2 MS. MENNINGER: Your Honor, may I raise one issue?

3 Your Honor gave us a 5 o'clock extension of filing of a brief
4 today. Can I ask for one hour so that we could -- until 6:00
5 p.m. for that filing so we can confer with our office?

6 THE COURT: Okay.

7 MS. MENNINGER: Thank you.

8 THE COURT: I don't even know what it is. I'll still
9 be here at 6:00. That will be fine.

10 MS. COMEY: Your Honor, just one thing to alert the
11 Court. I believe the parties have reached, in principle,
12 agreement on a stipulation regarding Mr. Glassman. So that
13 will obviate the need to deal with the service issue for his
14 live testimony.

15 THE COURT: Sounds like a good idea.

16 MR. PAGLIUCA: It could have been fun, your Honor.

17 THE COURT: If only someone had thought of that
18 sooner.

19 The witness is coming back and we can bring in the
20 jury. Thank you for working out agreement on the timeframe
21 issue.

22 MR. EVERDELL: Yes, your Honor.

23 (Witness present)

24 THE COURT: You may take a seat and you can remove
25 your mask. Just waiting for the jury.

LCGCmax6

Aznaran - direct

1 (Jury present)

2 THE COURT: Thank you for your patience, members of
3 the jury. We will continue with the direct examination of
4 Mr. Aznaran.

5 Mr. Aznaran, I remind you are you under oath.

6 Mr. Everdell you may inquire.

7 MR. EVERDELL: Thank you, your Honor.

8 BY MR. EVERDELL:

9 Q. Welcome back, Mr. Aznaran.

10 A. Thank you.

11 Q. If you recall when we left off, I was asking you about some
12 reports that you ran in the TECS system; is that right?

13 A. Yes.

14 Q. Can you remind us how many different travelers' reports did
15 you run in the TECS system?

16 A. Three.

17 Q. I believe you said those were for Jane, Kate, and Annie
18 Farmer; is that right?

19 A. Yes.

20 MR. EVERDELL: With the Court's permission I want to
21 show him what's been marked for identification as MA1.

22 Q. Mr. Aznaran, there is a document on the floor next to you,
23 you can pick that up, and a copy has been provided to the
24 government and the Court. Can you look at that document marked
25 as MA1 for identification.

LCGCmax6

Aznaran - direct

1 A. Okay. Yes.

2 Q. Do you recognize what MA1 is?

3 A. Yes.

4 Q. What is MA1?

5 THE COURT: Just without saying any of the names.

6 Q. Without saying the names of the travelers, please.

7 A. It is a person encounter list from TECS.

8 Q. Are these the person encounter list from the three
9 travelers you were asked to look at?

10 A. Yes.

11 Q. And how do you recognize them?

12 A. I ran them on December 14th of 2021.

13 Q. And are they fair and accurate copies of the three TECS
14 reports that you searched for and pulled off the system for the
15 border crossing records of Jane, Kate, and Annie Farmer?

16 A. Yes.

17 MR. EVERDELL: Your Honor, defense offers MA1 under
18 temporary seal to allow for redactions to protect privacy of
19 witnesses in this case.

20 MS. POMERANTZ: No objection.

21 THE COURT: All right. MA1 is admitted under seal to
22 redact the identifying information of witnesses who I have
23 allowed to testify under pseudonyms. Thank you.

24 (Defendant's Exhibits MA1 received in evidence)

25 MR. EVERDELL: With the Court's permission, I'll hand

LCGCmax6

Aznaran - direct

1 out copies to the jury.

2 THE COURT: Okay.

3 Q. Mr. Aznaran, do you have the document in front of you?

4 A. Yes.

5 Q. First I'd like you to walk us through the various columns
6 that are in this report.

7 But just for clarity sake, do domestic flights appear
8 on these reports or just international flights?

9 A. Just international.

10 Q. And if you could explain please then the different columns
11 as you read across the first page, what those mean.

12 A. The first column is last name, last name of the passenger.

13 Q. Again, please don't read the name.

14 A. Last name of the passenger or the person that's been
15 queried. The next column is the first name, which is the first
16 name of the person. DOB is for date of birth. DOC type is the
17 document type that's on record, such as, in this case, the
18 first page, the letter P is for passport. Document number is
19 the number of the documents, on this case, the passport number.
20 Date and time, eastern. So the date is the date of the border
21 crossing. The time is the time that they were processed when
22 they came through port of entry. Carrier code is two letters,
23 that's the airline code. So towards the bottom of the first
24 page, AA is American Airlines, for an example. Carrier number
25 is the number of the flight. I/O is indicating whether that

LCGCmax6

Aznaran - direct

1 particular record was for an inbound or an outbound travel.

2 Site is the particular federal inspection site that the person
3 was encountered at.

4 Q. Could you explain that a little more. What do you mean by
5 the federal inspection site?

6 A. So on this first page, you have the very first site at the
7 top is Alpha 271. That is the specific terminal at whatever
8 airport that that traveler was encountered. So if I flip to --
9 it's been redacted, but -- for example, JFK airport has five
10 international terminals. Terminal 4 is Alpha 471. Delta used
11 to be Alpha 473.

12 Q. When we're referring to the sites, are those the sites
13 where the booths or the kiosks are where the immigration
14 officials stamp your passports?

15 A. Yes.

16 Q. Going to the right, what else do you see on these columns?

17 A. Then you have type. So that is the type of or more like
18 the way that this information was obtained for each border
19 crossing.

20 Q. And on that, if you look at the first entry --

21 THE COURT: Can't quite hear you there, Mr. Everdell.

22 MR. EVERDELL: Sorry.

23 Q. On the column marked type, you see the first entry on the
24 top, it says airline, not API?

25 A. Right.

LCGCmax6

Aznaran - direct

1 Q. And the one below that says APIS?

2 A. Yes.

3 Q. Can you explain the difference between the two.

4 A. So the first one, airline, not API. An airline employee at
5 some point manually entered that person's information into
6 their manifest system as opposed to APIS, which is Advanced
7 Passenger Information System. That means that that airline
8 submitted their manifest electronically to the APIS system and
9 it was electronically and automatically uploaded into TECS.

10 Q. Okay. And what's next?

11 A. The next column is status.

12 Q. What does that indicate. Actually, if I can have you look
13 maybe at page 3 of the document, and you look at top of the
14 page, the third entry down in the column status, it says the
15 word passenger; is that right?

16 A. Yes.

17 Q. So what does that indicate?

18 A. That indicates that that person was, at one point or
19 another, added to that manifest of that airline for that
20 particular flight.

21 Q. Going to the next column, updated status.

22 A. Updated status, I have, in all of my experience querying
23 travel records, I have never seen anything in that column, and
24 I honestly don't know what it means or what it's supposed to.

25 Q. Understood. What about the columns to the right of that?

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Aznaran - direct

1 A. So ARRLOC, arrival location. That is the location, on the
2 first page anyway, all the airports that the flight is going to
3 be arriving or landing at. And to the right of that, DEPLOC is
4 departure location. That is the airport where the flight is
5 departing from.

6 Q. So let's just take one example, the first example on
7 page 1. That reflects a flight that Jane took from CDG to LAX;
8 right?

9 A. Yes.

10 Q. Do you know what CDG is?

11 A. Is Paris, Charles de Gaulle.

12 Q. And LAX is what?

13 A. Los Angeles International.

14 Q. And was that an incoming or outgoing flight?

15 A. That would be incoming. It departed from Paris and it
16 landed at LAX, or Los Angeles.

17 Q. And you know the incoming from the I in the I/O category?

18 A. Yes, also Paris to Los Angeles. So that would be an
19 incoming.

20 Q. And the date and time reflected there is 7/25/2004; right?

21 A. Yes.

22 Q. So what does that date reflect?

23 A. That is the date that that passenger arrived into the
24 United States and was processed.

25 Q. And the time?

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Aznaran - direct

1 A. The time is the updated time that the passenger was
2 actually processed by a CBP officer in the passenger operations
3 environment.

4 Q. All right. So looking at the information in this chart,
5 what of this information comes from the airlines and what of
6 this information comes from the kiosks when they're stamped
7 into the country?

8 A. So the airline manifest is going to provide the last name,
9 first name, the date of birth, document type, document number,
10 the carrier code, the carrier number, inbound or outbound, the
11 type, the arrival location, and the departure location.

12 Q. That all comes from the airline?

13 A. Yes.

14 Q. And the rest of the information that's not that is, I
15 think, the date and time and the site; is that right?

16 A. The date and the time is when the manifest is first loaded.
17 The date and the time will reflect the date of the flight and
18 it will reflect the time of the flight, the time of arrival.
19 Once the passenger is processed and that information is
20 captured by their border crossing into TECS, that time is
21 supposed to be updated to the time when they were processed.

22 Q. Processed at the immigration kiosk?

23 A. At the kiosk, correct.

24 Q. At the site location listed there?

25 A. Yes.

LCGCmax6

Aznaran - direct

1 Q. Okay. It looks like outbound flights, O's in that column
2 don't have any site information typically. Why is that?

3 A. Because CBP, we don't have a 100 percent outbound mandate,
4 if you will.

5 Q. So you need to track incoming flights, people coming into
6 the United States, but not necessarily people leaving the
7 United States?

8 A. I wouldn't say track. I would say when you come into the
9 United States, you are required to be processed or admitted
10 into the country. When you depart the country, there is no --
11 for example, at JFK, there is no FIS, or federal inspection
12 site with actual CBP officers that are processing you when you
13 go to get on board your outbound flight.

14 Q. Understood. So I just want to take a look at the years
15 that's reflected in this report. If you look at the first
16 page, which are the records of Jane's travel; right?

17 A. Yes.

18 Q. You see the earliest one there is January 6th, 1996; right?

19 A. Yes.

20 Q. And the latest one there is July 25th, 2004; right?

21 A. Correct. Yes.

22 Q. Now, when you originally did this search, I think you said
23 you searched all the way up to 2010; correct?

24 A. Yes.

25 Q. And were there records going that late, do you recall?

LCGCmax6

Aznaran - direct

1 A. I believe so, yes.

2 Q. So we're just looking at a subset; right?

3 A. Yes.

4 Q. And same thing with Kate's records. If you go to page 3 of
5 that exhibit, you see on that page, there is some records of
6 transits, earliest one there is February 29th of 2004; is that
7 right?

8 A. My pages are --

9 Q. I think you have to count manually, one, two, three, third
10 page?

11 THE COURT: The page number is at the bottom right.

12 MR. EVERDELL: We can try that.

13 Q. That page is 5. Do you see that?

14 A. 5.

15 Q. For Kate, the earliest one on that page is February 29th,
16 2004?

17 A. Yes.

18 Q. And the latest one is April 3rd of 2006; right?

19 A. Yes.

20 Q. Going to what's page 7, there is some redacted entries, but
21 those are also Kate records; is that right?

22 A. I'm sorry?

23 Q. Those are also Kate records on page 7?

24 A. Yes.

25 Q. And the earliest one there is November 1st, 1997; correct?

LCGCmax6

Aznaran - direct

1 A. Correct.

2 Q. And that one is October 14th, 2006?

3 A. Yes.

4 Q. And then finally, looking at Annie Farmer on page 9,
5 earliest record there is July 20th, 1997?

6 A. Yes.

7 Q. And the latest one there is April 11th, 2006; right?

8 A. Yes.

9 Q. Now, just to be clear, we talked about how late you
10 searched, 2010, but how early did you search the records?

11 A. 1994. January 1st, 1994.

12 Q. And these are the first records that come up in that
13 system, going back to '94?

14 A. Yes.

15 Q. Let's actually flip back to page 1, or I guess it's page 2
16 of the exhibit, even though it's the first page, you'll see
17 that's a record for Jane. If you look down at the last one on
18 the page, the flight on January 6th, 1996 -- do you see that?

19 A. Yes.

20 Q. That is the earliest border entry in the TECS system for
21 Jane; correct?

22 A. Yes.

23 Q. And you see the date of birth for Jane there. I don't want
24 you to say what it is, but do you see it?

25 A. Yes.

LCGCmax6

Aznaran - direct

1 Q. And if you can do the math, based on her date of birth, how
2 old was she when this flight -- when she made this border
3 crossing back in the United States?

4 A. 16.

5 Q. Actually. You want to do the math again? It's date of
6 birth --

7 MR. EVERDELL: I can say the year, can I not?

8 Q. Is it accurate to say that she would have been 15 when that
9 flight took place?

10 A. Yes.

11 Q. Then you look at the entry above that, that's the flight on
12 April 15th of 1996; right?

13 A. Yes.

14 Q. And where did that flight arrive into?

15 A. Arrived into JFK.

16 Q. Where did it depart from?

17 A. MXP, which is Milan, Italy.

18 Q. Based on the date of birth, fair to say that Jane would
19 have been 15 when that flight took place?

20 A. Yes.

21 Q. And if you look at the flight above that, that's the flight
22 on June 21st, 1997; right?

23 A. Yes.

24 Q. And, again, based on the date of birth for Jane, she would
25 have been 16 when that flight took place; right?

LCGCmax6

Aznaran - direct

1 A. Yes.

2 Q. Let's take a look at a few of Kate's entries. So flip to
3 page 7 of what's marked on the bottom right as page 7.

4 A. Yes.

5 Q. You see the entry there is November 1st of 1997; is that
6 right?

7 A. Yes.

8 Q. Is that the earliest border entry in the TECS system for
9 Kate?

10 A. Yes.

11 Q. And you see her date of birth over to the left?

12 A. Yes.

13 Q. Based on her date of birth, she would have been 20 years
14 old when that flight took place; is that right?

15 A. Yes.

16 Q. So does this report reflect that Kate had any border
17 crossings in 1994?

18 A. No.

19 Q. Does it reflect any border crossings for Kate in 1995?

20 A. No.

21 Q. Does it reflect any border crossing records for Kate in
22 1996?

23 A. No.

24 Q. First one was that one in November 1st, 1997, when she's
25 20?

LCGCmax6

Aznaran - cross

1 A. Yes.

2 Q. Now I want you to flip to the last page. Those are the
3 records for Annie Farmer?

4 A. Yes.

5 Q. Why don't you look at that last entry. That's a flight on
6 July 20th, 1997; correct?

7 A. Yes.

8 Q. What city did this flight depart from?

9 A. DUS, which is Düsseldorf, Germany.

10 Q. Where did it arrive?

11 A. EWR, which is Newark Airport, New Jersey.

12 Q. Is this the earliest border entry in the TECS system for
13 Annie Farmer?

14 A. Yes.

15 Q. Does this report show any border crossings for Annie Farmer
16 in 1996?

17 A. No.

18 MR. EVERDELL: One moment, your Honor.

19 THE COURT: Okay.

20 MR. EVERDELL: No further questions, your Honor.

21 THE COURT: Ms. Pomerantz.

22 MS. POMERANTZ: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MS. POMERANTZ:

25 Q. Good afternoon.

LCGCmax6

Aznaran - cross

1 A. Good afternoon.

2 Q. You've been testifying about CBP records of international
3 flights from the 1990s and 2000s; right?

4 A. Yes.

5 Q. In your work as a CBP officer, do you have experience
6 reviewing flight records from before September 11th, 2001?

7 A. Yes.

8 Q. In your work as a CBP officer, do you have experience
9 reviewing flight records from after 9/11?

10 A. Yes.

11 Q. Based on your review of CBP records in your experience as a
12 CBP officer, have you noticed a difference between CBP records
13 from before 9/11 and after 9/11?

14 A. Yes.

15 Q. What difference have you noticed?

16 A. Well, so if you -- if you look at the records, not
17 necessarily these, but just in general, from my experience,
18 what I have noticed is the farther back you go from the present
19 time, the more likelihood that you are not going to get an
20 on-board or not-on-board status for those records.

21 (Continued on next page)

LCGVMAX7

Aznaran - cross

1 BY MS. POMERANTZ:

2 Q. As a CBP officer, is it important to your job to understand
3 whether the CBP records you are reviewing are thorough and
4 accurate?

5 A. Yes.

6 Q. And in your day-to-day work as a CBP officer, do you rely
7 on CBP records from before 9/11 to be complete?

8 A. We'd like to rely on or hope that the records are complete,
9 but not necessarily all the time, no.

10 Q. And why is that the case that records before 9/11 are not
11 necessarily complete?

12 A. Prior to 9/11, there was a little bit of a difference
13 between how the records were submitted to CBP systems and the
14 reliability of the airlines was not as good as it is now or
15 after 9/11.

16 Q. And when did that start to change in terms of when did the
17 records start to be more complete and thorough?

18 A. After 9/11, there were several acts put into place by the
19 U.S. Government. The Department of Homeland Security was
20 created. And basically, the airline industry was at one point
21 mandated now to submit more complete records to CBP. I feel
22 comfortable saying -- as far as the status indicators, I feel
23 comfortable saying roughly 2009, 2010, based on the records
24 that I have ran in my experience, you would see more onboard or
25 not onboard status.

LCGVMAX7

Aznaran - cross

1 Q. I want to talk about people traveling into the United
2 States. In your work you refer to that as inbound travel,
3 right?

4 A. Yes.

5 Q. Based on your review of CBP records and your experience as
6 a CBP officer, if someone was traveling into the United States
7 before September 11th, 2001, would CBP records necessarily
8 reflect that person's travel into the United States?

9 A. Not necessarily.

10 Q. Can you explain why?

11 A. Once again, the recordkeeping and the way that the airlines
12 used to basically operate, I'll go back to APIS, Advance
13 Passenger Information System. Prior to 9/11, it was voluntary
14 for airlines to submit their manifests to APIS. After 9/11
15 and, more specifically, the most recent update that I'm aware
16 of in, I believe it's 2005, mandated airlines to submit full
17 and complete manifests to CBP using the APIS system.

18 Q. I want to talk about when someone leaves the United States
19 and travels internationally. In your work, you refer to that
20 as outbound travel, right?

21 A. Yes.

22 Q. Based on your review of CBP records and your experience as
23 a CBP officer, if someone was traveling out of the United
24 States before September 11th, would CBP records necessarily
25 reflect that person's travel out of the United States?

LCGVMAX7

Aznaran - cross

1 A. Not necessarily, no.

2 Q. And can you briefly explain why?

3 A. Once again, the airlines, it was a little bit of a
4 different -- different world before 9/11 happened.

5 Q. I want to turn to the records that defense counsel asked
6 you about during direct examination.

7 Can you be certain that all outbound travel before
8 9/11 for the listed individuals is reflected in those records?

9 A. No.

10 Q. And again, briefly, why not?

11 A. I can't really say whether these records truly reflect
12 exactly any passenger's complete travel history.

13 Q. Can you be certain that all inbound travel before 9/11 for
14 those individuals is reflected in these records?

15 A. No.

16 Q. So it is possible that the people named in these records,
17 in fact, took international trips in the 1990s that are not
18 reflected in these records, right?

19 A. Possible.

20 Q. I think defense counsel had pointed you to -- if we could
21 turn to page 9. We're in Defendant's Exhibit MA-1.

22 THE COURT: I can't quite hear you, Ms. Pomerantz.

23 MS. POMERANTZ: I'm sorry. Defense Exhibit MA-1.

24 Q. We're on page 9. And on the last line there is a flight on
25 July 20th, 1997. Do you see that?

LCGVMAX7

Aznaran - redirect

1 A. Yes.

2 Q. And I believe that you testified that that was a flight
3 from Düsseldorf to Newark; is that right?

4 A. Yes.

5 Q. But there is no flight reflected here of Annie's trip to
6 Düsseldorf, right?

7 A. No.

8 Q. So to be clear, these records are not necessarily an
9 exhaustive list of every time Jane, Kate, and Annie traveled
10 internationally before September 11th, 2001, are they?

11 A. Not necessarily, no.

12 MS. POMERANTZ: No further questions.

13 THE COURT: Mr. Everdell.

14 MR. EVERDELL: Redirect.

15 THE COURT: Okay.

16 REDIRECT EXAMINATION

17 BY MR. EVERDELL:

18 Q. Mr. Aznaran, you were asked some questions on
19 cross-examination about the completeness of the records, right?

20 A. Yes.

21 Q. And I think you mentioned that before 9/11, the airlines
22 weren't always as complete with providing manifests as they
23 were after 9/11; is that right?

24 A. Yes.

25 Q. But as we discussed, not all the information on this TECS

LCGVMAX7

Aznaran - redirect

1 report comes from the airlines, isn't that right?

2 A. Correct.

3 Q. You mentioned certain columns that came from the kiosks and
4 the people who actually swiped the passports in at the
5 immigration sites; is that right?

6 A. Yes.

7 Q. And so, in fact, the site that you discussed was the site
8 where people passed through?

9 A. Yes.

10 Q. And that would get populated when that traveler went
11 through that site, right?

12 A. Yes.

13 Q. And the date and time you said should get updated with that
14 information of when that passenger goes through the site in the
15 TECS report if they go through that immigration site, right?

16 MS. POMERANTZ: Objection, your Honor.

17 If we can just place this in time.

18 Q. I'm talking about prior to 9/11.

19 A. I'm sorry, say the question again.

20 Q. We're talking about records prior to 9/11. You said that
21 for any of these records, before 9/11 or not, the date and time
22 reflects the date and time -- first it reflects the date and
23 time of the flight. But if the person goes through an
24 immigration site, it then gets updated to reflect the time that
25 they went through the kiosk and got their passport stamped;

LCGVMAX7

Aznaran - redirect

1 correct?

2 A. Correct. Yes.

3 Q. And that is information that comes from the people on the
4 ground at the immigration sites, not from the airlines, right?

5 A. Not from the people, but from the actual kiosk, yeah, or
6 the -- the booth.

7 Q. From the computer systems that they are working on, right?

8 A. Correct.

9 Q. Okay. And so that's not dependent on whether the airlines
10 has given their manifests or not, right?

11 A. Correct.

12 Q. Okay. So if we look at that last page again of the
13 exhibit, MA-1, and let's just take an example. You see the
14 second entry from the bottom, that's a flight on May 27th,
15 2000, for Annie Farmer?

16 A. Correct.

17 Q. And you see that there is a site listed there, right?

18 A. Yes.

19 Q. That's Alpha 263, right?

20 A. Yes.

21 Q. And there is a date and time listed for that -- for that
22 border crossing, right?

23 A. Yes.

24 Q. Okay. And it's that site and that date and time would
25 reflect when they actually passed through immigration, right?

LCGVMAX7

Aznaran - recross

1 A. Yes.

2 Q. That is not dependent on the airline information; correct?

3 A. Correct.

4 Q. All right. And if we look just down below at the entry for
5 the Düsseldorf flight that you were just asked about, right?

6 A. Yes.

7 Q. That also reflects a site, does it not?

8 A. Yes.

9 Q. And it reflects a date at least of that entry, right?

10 A. Yes.

11 Q. So that record reflects an actual border crossing at a site
12 in an immigration line at an airport for Annie Farmer, doesn't
13 it?

14 A. Yes.

15 Q. Okay. And that is not dependent on the airlines, right?

16 A. No. Correct.

17 Q. Okay. One moment, please.

18 THE COURT: Okay.

19 MR. EVERDELL: No further questions, your Honor.

20 THE COURT: Okay.

21 RECROSS EXAMINATION

22 BY MS. POMERANTZ:

23 Q. In the 1990s, there were no digital kiosk stands, right?

24 A. There were no digital kiosk stamps?

25 Q. Stands.

LCGVMAX7

Aznaran - recross

1 A. Oh, stands? I -- I don't know.

2 Q. Well, it was paper records; correct?

3 MR. EVERDELL: Objection. Foundation.

4 THE COURT: Sustained.

5 Q. Officer Aznaran, based on your experience as a CBP officer
6 and your review of CBP records, the CBP records from the 1990s
7 were paper records; correct?

8 MR. EVERDELL: Objection. Foundation.

9 THE COURT: Sustained.

10 MS. POMERANTZ: Your Honor, may I have just one moment
11 please?

12 THE COURT: Okay.

13 (Counsel conferred)

14 Q. Officer Aznaran, do you know whether they were paper
15 records in the 1990s?

16 MR. EVERDELL: Objection.

17 Asked and answered.

18 THE COURT: Overruled.

19 A. I'm sorry, say the question again.

20 Q. Do you know whether they were paper records in the 1990s?

21 A. Yes.

22 Q. And were they paper records?

23 A. Yes.

24 Q. And before 9/11, were paper records always logged in the
25 system?

LCGVMAX7

Aznaran - recross

1 MR. EVERDELL: Objection. Foundation.

2 THE COURT: Sustained.

3 (Counsel conferred)

4 Q. Do you know if in the 1990s, before 9/11, if paper records
5 were logged into CBP's system?

6 A. I would think that they were, but I'm not sure.

7 MR. EVERDELL: Objection. He's speculating.

8 THE COURT: Well, the answer is "I'm not sure," so --

9 MS. POMERANTZ: Your Honor, may I have just one
10 moment?

11 THE COURT: Okay.

12 (Counsel conferred)

13 MS. POMERANTZ: Nothing further, your Honor.

14 THE COURT: Okay.

15 MR. EVERDELL: Nothing further, your Honor.

16 THE COURT: All right. Thank you, Mr. Aznaran.

17 You may step down. You are excused.

18 (Witness excused)

19 THE COURT: Defense may call its next witness.

20 MS. MENNINGER: Your Honor, at this time we call
21 Dominique Hyppolite.

22 DOMINIQUE HYPPOLITE,

23 called as a witness by the Defendant,

24 having been duly sworn, testified as follows:

25 THE COURT: Thank you. You may inquire,

LCGVMAX7

Hyppolite - direct

1 Ms. Menninger.

2 MS. MENNINGER: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MS. MENNINGER:

5 Q. Good afternoon, Mr. Hyppolite.

6 A. Good afternoon.

7 Q. Where do you live?

8 A. In West Palm Beach, Florida.

9 Q. In Florida?

10 A. Yes, ma'am.

11 Q. And how long have you lived there?

12 A. Thirty-five years.

13 Q. Where do you work?

14 A. With Palm Beach School District.

15 Q. And where is the Palm Beach School District located?

16 A. In Florida, 3300 Forest Hill Boulevard, West Palm Beach,
17 Florida, 33406.

18 Q. Thank you.

19 And what is your title at the Palm Beach School
20 District?

21 A. As a specialist.

22 Q. What are your job responsibilities?

23 A. I coordinate the processing of subpoenas and represent the
24 district as a record custodian for trial and depositions.

25 Q. So you do subpoena responses for trials and depositions of

LCGVMAX7

Hyppolite - direct

1 records from the Palm Beach County School District?

2 A. Students records.

3 Q. Student records?

4 A. Yes.

5 Q. Okay. Are you familiar with the way that school records
6 are kept for the Palm Beach County School District?

7 A. Yes, ma'am.

8 Q. And can you describe for the jury a little bit about how
9 student records are kept.

10 A. Each school has a data processor and record custodian
11 depend on the level. Elementary, they have data processor.
12 And middle school, they have -- each grade has a -- someone
13 that takes care of records. And high school, they have record
14 custodian.

15 Q. And are the student's records entered into the system at
16 the time the student is there at the school?

17 A. Yes, ma'am. And the records follow the student. If the
18 student -- when the student is in elementary school. And once
19 they pull more to middle, and then everything follow the
20 student. And there is no information on the student in the
21 elementary school. Middle, and then it's transferred to high
22 school. And then after three years, then the student leave the
23 school system, and then the records and -- are -- they send the
24 records to the district to be purged and kept at the district
25 level.

LCGVMAX7

Hyppolite - direct

1 Q. Does the Palm Beach County School District keep some
2 electronic records of all students that have gone to school in
3 the district?

4 A. Yes. After three years, when the student withdraw from
5 Palm Beach -- from the schools, and then if the student is --
6 exceptional student education, the schools keeps the record for
7 five years. If the student is a regular student, after three
8 years the records are purged and processed and kept at the
9 district.

10 Q. And are they kept electronically?

11 A. Yes, ma'am.

12 Q. Are you able to go and search for a particular student's
13 name in the system?

14 A. Definitely, yes. I have access to that.

15 Q. And when you enter a student's name in the system, are you
16 able to pull up certain of their education records?

17 A. Yes.

18 Q. Is that true even if the student went to school in the '90s
19 or the early 2000s?

20 A. Yes, ma'am.

21 Q. So does the Palm Beach County School keep records for
22 decades, for example, on students?

23 A. Yes.

24 Q. Are there certain records that they get rid of? I think
25 you said some were purged.

LCGVMAX7

Hyppolite - direct

1 A. Yes, they keep the most significant information on the
2 student, and then they do that according to the procedures of
3 the school board of Palm Beach County.

4 Q. Great. And were you asked to search for certain student
5 files related to our case here?

6 A. Yes, ma'am.

7 Q. Did you put those students' name into the system and pull
8 up the records that the district still keeps for those
9 students?

10 A. Yes, ma'am.

11 MS. MENNINGER: Your Honor, may I approach with some
12 records?

13 THE COURT: Yes. Although it's 4:59, so are we
14 wrapping up?

15 MS. MENNINGER: I probably have 10 to 15 more minutes,
16 your Honor.

17 THE COURT: We'll have to break.

18 MS. MENNINGER: All right.

19 THE COURT: We'll break here, members of the jury, for
20 the evening. Same schedule for tomorrow. Thank you so much.

21 See you then.

22 (Jury not present)

23 THE COURT: Mr. Hyppolite, the witness may step down
24 and out for the evening. Thank you.

25 (Witness not present)

LCGVMAX7

Hyppolite - direct

1 THE COURT: Everyone may be seated.

2 All right. Matters to take up.

3 MS. COMEY: Your Honor, I would just note that we
4 previously offered to stipulate to this witness's testimony.
5 We're happy to stipulate to the remainder of it if he can be
6 released. I don't know whether the defense would like that.
7 They did us that courtesy with another witness from Florida who
8 had to stay overnight, so I wanted to offer it.

9 THE COURT: Thank you.

10 MS. MENNINGER: Thank you, your Honor.

11 I'll speak with the government afterwards about a
12 potential stipulation.

13 THE COURT: Okay. Thank you.

14 Other matters?

15 MS. COMEY: Nothing from the government, your Honor.

16 MS. MENNINGER: No, your Honor. Just that we have
17 conferrals on the inconsistent statements we are planning to do
18 after we finish.

19 THE COURT: What I'd like is for you to identify what
20 remains in dispute. What time can I hear from you on that?

21 MS. MENNINGER: 7:30?

22 MS. COMEY: That sounds reasonable to us, your Honor.

23 THE COURT: Okay. If there are issues that remain in
24 dispute, I guess I could ask for anything, just like a joint
25 chart that --

LCGVMAX7

Hyppolite - direct

1 MS. MENNINGER: Yes, your Honor. I think we can take
2 the same chart we have both been working off of and just
3 eliminate the ones that are no longer -- or somehow with color
4 indicate the ones that are still in dispute.

5 THE COURT: Yes. Or give me a new chart with the ones
6 that are in dispute and each just very briefly state each
7 side's position.

8 MS. MENNINGER: Yes, your Honor.

9 MS. COMEY: Yes, your Honor.

10 THE COURT: Okay. The only other thing -- oh, right.

11 So I gave you till 6 o'clock on what I didn't recall
12 at the time. It was your response on the remaining witness. I
13 sort of staggered the response time on the motion to preclude
14 based on when we thought we would have witnesses.

15 So who remains in dispute who will be called tomorrow?

16 MS. MENNINGER: I think there were Eva, Michelle, and
17 Kelly. I think Mr. Lopez, I believe, we're not calling.

18 MR. EVERDELL: That's right, your Honor.

19 MS. MENNINGER: So that one is no longer in dispute.

20 THE COURT: Okay. So you said Eva, Michelle, and
21 Kelly.

22 MS. MENNINGER: Yes, your Honor.

23 THE COURT: So they will be called tomorrow if they
24 are not precluded.

25 MS. MENNINGER: Yes, your Honor. I believe so.

LCGVMAX7

Hyppolite - direct

1 THE COURT: All right.

2 So I'll get the defense's response to the motion to
3 preclude on that this evening.

4 And so what is tomorrow looking like?

5 MS. MENNINGER: I think we will be done, your Honor.
6 I am looking at my co-counsel. We've had to -- we have to make
7 a couple of inquiries because your Honor ruled this morning on
8 anonymity, and there may be some other issues that we have to
9 figure out whether that will carry forward to Monday or not.

10 MR. EVERDELL: Your Honor, sorry to interrupt.

11 There may be one witness that does carry over to
12 Monday. We have to figure that out. But our goal, I think, is
13 to try to wrap up, with the exception of this one potential
14 witness, by tomorrow.

15 MS. STERNHEIM: Judge, may I have a moment?

16 THE COURT: Yes.

17 (Counsel conferred)

18 MR. EVERDELL: I think if we went over in the morning,
19 even if we had this one witness, it would be very brief, so we
20 could have almost a full day on Monday.

21 THE COURT: Okay.

22 So finishing tomorrow or a very short witness on
23 Monday means closings on Monday and then charge and to the
24 jury. Okay. I'll permit that so long as it does not interfere
25 with that schedule.

LCGVMAX7

Hyppolite - direct

1 MS. STERNHEIM: It will not interfere, Judge.

2 THE COURT: Okay.

3 MR. PAGLIUCA: Your Honor, just --

4 THE COURT: It's like I'm getting triple-teamed here.
5 I can barely keep up.

6 MR. PAGLIUCA: Sometimes five heads, six heads may be
7 better than one, sometimes maybe not.

8 But there is an issue about a government rebuttal
9 witness that I don't know if that's been resolved yet. And I
10 just wanted to lay that out there for the Court.

11 MS. COMEY: Yes, your Honor. We are leaning against
12 calling that witness. We need to circle up as a team and we'll
13 have a final decision tomorrow morning for your Honor. I doubt
14 we will be calling any rebuttal witnesses.

15 THE COURT: Okay. I guess the only thing I would ask
16 you to consider is if we have time left over tomorrow, if there
17 is a very short witness on Monday, if perhaps the government
18 does intend to call a rebuttal, if you would consider using the
19 time tomorrow for the rebuttal, if that's acceptable to the
20 defense.

21 MR. PAGLIUCA: If there is going to be a rebuttal
22 witness, your Honor, there's going to be briefing on it
23 tonight.

24 THE COURT: I'm here all day.

25 When will you come to a decision?

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1 MS. COMEY: Your Honor, I think we can come to a
2 decision tonight by 8 o'clock. I'll be with Ms. Menninger
3 until 7:30. At 8 o'clock.

4 THE COURT: All right. So by 8 o'clock. So if there
5 is, and that requires briefing, when will I get your brief,
6 Mr. Pagliuca?

7 MR. PAGLIUCA: 8:05, your Honor.

8 THE COURT: It's in the can. Glad to hear it.

9 I don't know if you are joking, actually.

10 MR. PAGLIUCA: No, I'm not joking, your Honor. 8:05
11 is when you will get it.

12 THE COURT: Good deal. I like it.

13 Okay. A couple other odds and ends.

14 I got a letter yesterday from counsel for a potential
15 defense witness. As far as I could tell, there was no
16 application in the letter. I don't know if anyone has an
17 application.

18 MS. COMEY: I don't believe there's any application
19 from that witness or from the government with respect to that
20 witness, your Honor.

21 MS. MENNINGER: We don't have it, your Honor. I don't
22 know what you're talking about.

23 THE COURT: One of you was cc'd on it.

24 MS. COMEY: I believe Ms. Menninger was cc'd on it.

25 May I confer?

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1 THE COURT: You may.

2 (Counsel conferred)

3 MS. MENNINGER: Your Honor, if we could consider
4 whether what we need to do as far as docketing that or making a
5 record about it, we could do it tomorrow morning at the 8:45
6 mark. It may be important for a foundational -- an exhibit
7 that may be predicated on an unavailable witness, and that's
8 the only reason I am considering whether anything else needs to
9 happen.

10 THE COURT: Okay. You'll confer.

11 MS. MENNINGER: Yes.

12 MS. COMEY: Yes, your Honor.

13 THE COURT: Okay. But, as I said, I didn't understand
14 an application in that letter, so I'm not doing anything with
15 it.

16 MS. MENNINGER: Your Honor, we just needed a record of
17 that officially in case we needed it for a foundational
18 purpose, and so that was the reason that I had said if --

19 THE COURT: Okay. If that becomes a judicial
20 document, if I use it in some way, it will be docketed.

21 MS. MENNINGER: Right. I understand.

22 MS. COMEY: Yes, your Honor.

23 THE COURT: Okay. And then the only other thing I
24 want to ask about is defense counsel as to timing. It's
25 usually around here where I allocute the defendant as to their

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1 rights.

2 MS. STERNHEIM: Judge, I would ask that we wait until
3 tomorrow please.

4 THE COURT: Okay.

5 MS. STERNHEIM: Thank you.

6 THE COURT: We will do that.

7 MS. COMEY: Just one quick question, your Honor.

8 THE COURT: Yes.

9 MS. COMEY: Is there any sense of when we might expect
10 a draft of the jury charge?

11 THE COURT: It will be tomorrow.

12 MS. COMEY: Thank you, your Honor.

13 THE COURT: That's tonight's project for the 9 a.m.
14 conference.

15 I don't suppose anyone has a time estimate of
16 closings?

17 MS. STERNHEIM: What's a closing, Judge?

18 I don't think we have an idea yet. As soon as we
19 do --

20 THE COURT: Do you prefer "summations"?

21 MS. STERNHEIM: I prefer that, too. I prefer actually
22 getting two cracks at it, like the government, but we'll be
23 sparse. I don't think we're in a position to inform the Court
24 yet.

25 THE COURT: Okay. But presumably we're looking at

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1 completing closings and the charge on Monday.

2 MS. STERNHEIM: Yes.

3 THE COURT: Okay.

4 MS. MENNINGER: May I inquire, your Honor? In some
5 courtrooms I've been in there is a rule, perhaps not strongly
6 enforced, but strongly suggested, that the government only
7 reserve a certain portion of their summation for the rebuttal
8 piece because otherwise it ends up being a bit of a more in
9 rebuttal than in the actual substance. I don't know if your
10 Honor has that practice, but I would request that some
11 reasonable percentage be allocated to the first versus the
12 rebuttal portion.

13 MS. COMEY: Your Honor, I expect the rebuttal will be
14 significantly shorter than the closing. I don't think that's
15 going to be an issue.

16 THE COURT: Well, it certainly should be. It should
17 be rebuttal and not --

18 MS. COMEY: That's exactly right, your Honor. And
19 I'll be doing the rebuttal. I fully intend it to be much
20 shorter than the closing and to the point, as is consistent
21 with our office practice before your Honor and in this
22 district.

23 THE COURT: Okay. Anything else on that?

24 Let me just check my various inputs to see if I'm
25 missing -- check with my law clerk.

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1 All right. I don't have anything else.

2 So I will hear from you this evening. You'll get the
3 charge tomorrow. And I'll see you at 8:45. Thank you.

4 (Adjourned to December 17, 2021 at 8:45 a.m.)

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19

20

21

22

23

24

25

INDEX OF EXAMINATION

Examination of:	Page
-----------------	------

CIMBERLY ESPINOSA

Direct By Mr. Everdell2327
----------------------------------	-------

Cross By Ms. Pomerantz2386
----------------------------------	-------

RAGHU SUD

Direct By Mr. Everdell2388
----------------------------------	-------

Cross By Ms. Moe2397
----------------------------	-------

ELIZABETH LOFTUS

Direct By Ms. Sternheim2398
-----------------------------------	-------

Cross By Ms. Pomerantz2454
----------------------------------	-------

Redirect By Ms. Sternheim2482
-------------------------------------	-------

MICHAEL WILLIAM AZNARAN

Direct By Mr. Everdell2486
----------------------------------	-------

Cross By Ms. Pomerantz2517
----------------------------------	-------

Redirect By Mr. Everdell2522
------------------------------------	-------

Recross By Ms. Pomerantz2525
------------------------------------	-------

DOMINIQUE HYPPOLITE

Direct By Ms. Menninger2528
-----------------------------------	-------

DEFENDANT EXHIBITS

Exhibit No.	Received
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CE3 through CE82363
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RS-12394
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EF-12450
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MA12506
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